



**REGULAR MEETING
CITY OF ROSWELL COUNCIL - AMENDED AGENDA
THURSDAY, MARCH 10, 2016
Roswell Museum and Art Center
Bassett Auditorium - 100 W. 11th Street
Roswell, New Mexico 88201**

Notice of this meeting has been given to the public in compliance with Sections 10-15-1 through 10-15-4 NMSA 1978 and Resolution No. 15-56. Except for emergency matters, the City Council shall take action only on the specific items listed on the Agenda.

MARCH 10, 2016

MAYOR - Dennis J. Kintigh

6:00 p.m.

Ward 1
Juan Oropesa
Natasha Mackey

Ward II
Steve Henderson
Caleb T. Grant

Ward III
Art Sandoval
Jeanine Best

Ward IV
Jason Perry
Savino Sanchez Jr.

Ward V
Barry Foster
Tabitha D. Denny

WELCOME! We are very glad you have joined us for the Roswell City Council meeting. If you wish to speak, please sign up at the podium prior to 6:00 p.m. All matters listed under Consent Items/Consent Agenda are considered routine by the City Council and will be approved by one motion. There will be no separate discussion on these items. If two members of the council desire to discuss the matter, that item will be removed from the consent agenda and will be considered separately. Any item approved as part of the consent agenda is not an agenda item for the purpose of public participation. The Council is pleased to hear relevant comments; however, a 3-minute limit is set in accordance with Resolution 15-56. Large groups are asked to name a spokesperson. Robert's Rules of Order govern the conduct of the meeting. "THANK YOU" for participating in your City Government.

OPENING CEREMONIES

Call to Order by Presiding Officer

Roll Call & Determination of Quorum

Pledge of Allegiance to the Flag and Invocation

Agenda/Consent Items/Minutes from the February 11, 2016 Regular City Council meeting and the minutes from the Special City Council meeting of February 29, 2016.

NON-ACTION ITEMS (Information Items)

1. Presentation - Zika Virus - Karen Sanders
2. Presentation - Clean and Safe Program Update - Mike Mathews

PUBLIC PARTICIPATION ON AGENDA ITEMS

In order to speak you must sign up prior to the Council Meeting.

PUBLIC HEARING(S)

3. Proposed Ordinance 16-05 - To hold a public hearing on Proposed Ordinance 16-05 which would place certain limitations on drilling of new domestic wells within the city limits. (Perry/Zarr)

CONSENT ITEMS

Bids and RFP's

4. Request to approve GSA Contract No. GS25F0062M – lease and maintenance agreement for multi-functional copier machines from PTS Office Systems, Inc.

RIAC Leases

5. Request approval to authorize Zachary Canright and Jared Putman, as individuals, to renew their current lease agreement on “T” Hangar Building No. 120, Space 3.
6. Request to authorize Thurston Woods, an individual, to renew his current lease agreement on a portion of Building No. 1776.
7. Request to authorize Zen Sportz, Inc., a New Mexico Corporation, to renew their current lease agreement on office space in Building No. 1, the Terminal.
8. Request for Birdman Air Enterprise, Inc., a New Mexico Corporation, to amend their current lease agreement to add an additional 6,250 square feet to their leasehold in Building No. 1770.

Resolution(s)

9. Resolution 16-17 Weeds - The Resolution shall mandate the cleanup of approximately four (4) separate properties within the City.
10. Resolution 16-18 Condemnations - The Resolution shall require the removal or demolition of eight (8) dilapidated structures.

Lodger's Tax Request

11. Request approval of funding for the 6th Annual Xcel Energy Tour de Ocho Millas in the amount of \$2,000.
12. Request approval of funding for the 2016 Roswell Hike It! & Spike It! 4-on4 Charity Flag Football Tournament in the amount of \$20,000.

Minutes

13. Approval of the minutes from the February 11, 2016 Regular City Council meeting.
14. Approval of the minutes from the February 29, 2016 Special City Council meeting.

NEW BUSINESS / REGULAR ITEMS

Resolution(s)

15. Resolution 16-19 - City Council is asked to consider Resolution 16-19 Budget Amendment for overtime for police services at the Eastern New Mexico State Fair - \$11,170. (Grant/Garcia)
16. Resolution 16-14 - Request approval of Resolution 16-14 the adoption of the annual Community Development Block Grant Policies and Plans. (Best/Morris)
17. Resolution 16-15 - Request approval of Resolution 16-15 the participation in the Capital Outlay Program administered by the New Mexico Department of Transportation (appropriation of \$200,000). (Best/Morris)
18. Resolution 16-16 - Request approval of Resolution 16-16 the participation in the Capital Outlay Program administered by the New Mexico Department of Transportation (appropriation of \$325,000). (Best/Morris)
19. Resolution 16-20 - Request approval of Resolution 16-20 a budget amendment for Cell #4 at the Landfill for applicable Gross Receipts Tax in the amount of \$107,938.02. (Grant/Garcia)
20. Resolution 16-21 - Request approval of Resolution 16-21 a budget amendment for UFO Festival in the amount of \$80,000. (Grant/Garcia)
21. Resolution 16-22 – Request approval of Resolution 16-22 a mid-year budget amendment for FY2016.. (Grant/Garcia)

Request(s)

22. Request approval of the following appointments as recommended by Mayor Kintigh. (Sandoval/Mayor Kintigh)
 - Chief of Police - Philip Smith
 - City Treasurer - Monica Garcia
 - City Clerk - Sharon Coll
23. Election of Mayor Pro Tem. (Sandoval/Mayor Kintigh)
24. Proposed Ordinance 16-06 - Request to advertise for a public hearing on Proposed Ordinance 16-06 - Cable One Franchise. (Perry/Zarr)
25. Proposed Ordinance 16-07 - Request to advertise for a public hearing on Proposed Ordinance 16-07 - Convention Center Fees Ordinance. (Perry/Zarr)
26. Request approval of the Audited Financial Statements for Fiscal Year Ending June 30, 2015. (Garcia/Grant)

PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

In order to speak you must sign up prior to the Council Meeting.

DEPARTMENT REPORTS

- 27.
- Gross Receipts Tax - February 2016
 - Lodgers' Tax
 - Human Resources
 - Animal Control
 - Police Department
 - Fire Department
 - Code Enforcement
 - Roswell Public Library
 - Convention Center Maintenance
 - Convention Center Expense
 - Convention Center Activity
 - Visitor's Bureau

Adjournment

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Human Resources at 575-624-6700 at least one week prior to the meeting or as soon as possible. Public documents including the agenda and minutes can be provided in various accessible formats. Please contact the City Clerk at 575-624-6700 if a summary of other type of accessible format is needed.

Printed and posted: **Monday, March 7, 2016**

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 1.

Meeting Date: 03/10/2016

COMMITTEE: N/A

CONTACT: Mike Mathews

CHAIR: N/A

ACTION REQUESTED:

Presentation - Zika Virus - Karen Sanders

BACKGROUND:

Zika Virus overview and prevention.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

City pays county approximately \$33,000 annually for vector control.

LEGAL REVIEW:

Not applicable.

BOARD AND COMMITTEE ACTION:

Not applicable.

STAFF RECOMMENDATION:

Not applicable.

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 2.

Meeting Date: 03/10/2016

COMMITTEE: N/A

CONTACT: Mike Mathews

CHAIR: N/A

ACTION REQUESTED:

Presentation - Clean and Safe Program Update - Mike Mathews

BACKGROUND:

Overview of the Clean and Safe program.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

Waving tipping fees at landfill for approved permitted demolitions.

LEGAL REVIEW:

Not applicable.

BOARD AND COMMITTEE ACTION:

Not applicable.

STAFF RECOMMENDATION:

Not applicable.

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 3.

Meeting Date: 03/10/2016

COMMITTEE: Legal

CONTACT: William Zarr

CHAIR: Jason Perry

ACTION REQUESTED:

Proposed Ordinance 16-05 - To hold a public hearing on Proposed Ordinance 16-05 which would place certain limitations on drilling of new domestic wells within the city limits. (Perry/Zarr)

BACKGROUND:

NMSA 1978 § 3-53-1.1 authorizes municipalities to limit the drilling of new domestic water wells within their exterior boundaries if property is located within the municipality and the property line of an applicant is within 300 feet of a municipal water distribution line, with certain exceptions.

NMSA 1978 § 3-27-3 also authorizes municipalities to adopt any ordinance or regulation necessary to carry out its powers to protect its water sources from pollution.

The City of Roswell has an extensive city wide water distribution system capable of meeting the water needs of its residents and businesses. However, there are currently no ordinances that manage the drilling of new domestic wells within the city limits.

The adoption of limitations on new domestic wells, including replacement wells, would protect the underground water sources from which the City water system draws from contamination and depletion that can result from the drilling and maintenance of numerous domestic wells, and to protect the quality and availability of the City's water distribution system, which provides water to the overwhelming majority of the City's residents and businesses.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

Not applicable.

LEGAL REVIEW:

The City Attorney has drafted and City staff has reviewed Proposed Ordinance 16-05.

BOARD AND COMMITTEE ACTION:

The Legal Committee recommended advertising Proposed Ordinance No. 16-05 at their meeting on February 25, 2016, with some minor, non-substantial changes that have been made as included in Version 2.

STAFF RECOMMENDATION:

City Council consideration of authorization on Proposed Ordinance 16-05.

Attachments

Proposed Ordinance 16-05 Version 1

Proposed Ordinance 16-05 Version 2

VERSION 1
PROPOSED ORDINANCE 16-05

AN ORDINANCE OF THE CITY OF ROSWELL AMENDING ARTICLE II OF CHAPTER 26 OF THE ROSWELL CITY CODE BY ADDING NEW SECTIONS 26-6, 26-7, 26-8, AND 26-9, PERTAINING TO RESTRICTIONS ON THE DRILLING OF NEW DOMESTIC WELLS WITHIN THE CITY OF ROSWELL, TO PROVIDE FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT, AND TO PROVIDE FOR SEVERABILITY AND EFFECTIVE DATE

WHEREAS, NMSA 1978 § 3-53-1.1 authorizes municipalities to restrict the drilling of new domestic water wells within their exterior boundaries if property is located within the municipality and the property line of an applicant is within 300 feet of a municipal water distribution line, with certain exceptions; and

WHEREAS, NMSA 1978 § 3-27-3 also authorizes municipalities to adopt any ordinance or regulation necessary to carry out its powers to protect its water sources from pollution; and

WHEREAS, while the City of Roswell has an extensive city wide water distribution system capable of meeting the water needs of its residents and businesses, it currently does not restrict the drilling of new domestic wells within the city limits; and

WHEREAS, the adoption of restrictions on new domestic wells, including replacement wells, is desirable in order to protect the underground water sources from which the City water system draws from contamination and depletion that can result from the drilling and maintenance of numerous domestic wells, and to protect the quality and availability of the City's water distribution system, which provides water to the overwhelming majority of the City's residents and businesses.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL AS THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO, that:

SECTION 1. Chapter 26 of the Roswell City Code is hereby amended by adding a new section 26-6 to read as follows:

26-6. Connection to city water distribution system required

Where a water distribution line is at or within three hundred (300) feet of the property boundary line, and the property is located within the corporate limits of the City of Roswell, the property owner must connect to the City of Roswell water system at said property owner's expense to the residence or building before a certificate of occupancy is issued unless otherwise provided under this article in the case of domestic wells, or for all other non-domestic uses, unless the property owner has water rights that permit the drilling of wells for all or part of the intended use of the property.

SECTION 2. Chapter 26 of the Roswell City Code is hereby amended by adding a new section 26-7 to read as follows:

Section 26-7. Connections to city water system:

All connections to the City water system shall be performed by a licensed plumber who shall have first secured a permit from the City, and all work shall be completed in accordance with the requirements of the New Mexico State Plumbing Code and Chapter 26 of the Roswell City Code.

SECTION 3. Chapter 26 of the Roswell City Code is hereby amended by adding a new section 26-8 to read as follows:

26-8. Restrictions on drilling of new domestic wells

- (a) The drilling of new domestic water wells within the corporate limits of the City of Roswell is hereby prohibited if the property boundary line of the applicant for a domestic well is within three hundred (300) feet of a municipal distribution line, except as provided in subsection (b) below.
- (b) The drilling of a new domestic well shall be authorized by the City if the total cost to the applicant of extending the municipal water line and the meter and the hook-up to the applicant's residence exceeds the cost of drilling a domestic well. The application shall be made to the City Engineer. The cost of drilling a domestic well shall include all costs necessary for the well to be operable, including the costs of drilling, piping and plumbing to the residence, the pump and necessary electrical connections thereto, additional linings to protect against contamination if necessary, and all applicable permit and inspection fees and gross receipts taxes. The City Engineer shall approve the authorization to drill a new domestic well if the cost of drilling a new domestic well is less than the cost of connecting to the City's water distribution system, and if the drilling of a new well will not likely result in the penetration of a contaminated area as determined under subsection (d) below. The applicant shall have the burden of proof.
- (c) The City Engineer shall establish a cost basis to calculate the cost of connection to the City's water distribution system. The cost of connection calculated by this basis shall be the cost against which the cost of drilling is to be compared. The cost of connection from the City's water distribution system to the applicant's home shall be determined by multiplying the length of the extension of the water line from the City distribution line to the residence times the cost per foot. The cost per foot established by the City Engineer shall be based on the average costs of materials meeting applicable code requirements, the costs of labor, a reasonable profit, gross receipts taxes and other factors that affect cost. The cost in effect at the time of the application shall be used for comparison. The cost may be periodically revised to reflect increase in the costs of labor, material or other associated costs.
- (d) In addition to the requirements of subsection (b), no application for a domestic well shall be approved where the drilling of a new well or replacement of an existing well will likely penetrate areas which has been documented by the United States Environmental Protection Agency, the New Mexico Environment

- Department or any other federal or state agency to be contaminated, and which could potentially adversely affect the underground water sources that the City of Roswell draws upon.
- (e) The applicant must first obtain a permit from the State Engineer to drill a well for irrigation, household or domestic use under NMSA 1978 § 72-12-1.1, prior to filing an application with the City Engineer for authorization to drill a new domestic well pursuant to such permit.
 - (f) The City Engineer shall act upon a domestic well application within thirty (30) calendar days of the receipt of said request or it shall be deemed approved. The thirty day time limit within which the City Engineer is required to act shall not commence until the applicant has filed all necessary documentation required by the city in support of the application.
 - (g) In the event that the City Engineer denies authorization for a new domestic well permit, the City shall provide domestic water service to the applicant's property within ninety (90) days from the date of such denial. The cost of connecting to the City's water distribution system shall be at the applicant's expense.
 - (h) In the event that the City Engineer denies authorization for a new domestic well permit, the applicant may request an informal hearing before the City Engineer.
 - (i) A denial of authorization for a domestic well permit by the City Engineer shall be final and may be appealed to the district court of Chaves County.
 - (j) The City of Roswell shall notify the Office of the State Engineer of all municipal permit denials for domestic well authorization.
 - (k) Nothing in this ordinance shall limit the authority of the State Engineer to administer water rights as provided by law.
 - (l) All domestic wells which have been approved by the City shall be drilled by a person licensed by the State of New Mexico to drill wells in the state and all work shall be done in accordance with requirements of the Office of the State Engineer.
 - (m) All new domestic wells and replacement domestic wells shall be metered for the purposes of imposing and collecting the charges established under section 26-106 of this chapter for the use of the city sewer facilities, lines and system.
 - (n) A well that replaces an existing or abandoned domestic well where the bore location of the well is changed shall be considered to be a new domestic well, and shall require completion of the same application for authorization for a new domestic well, and shall be subject to the same restrictions as the drilling of a new domestic well. Repairs to an existing domestic well to any extent shall not be considered to be a replacement well, so long as the bore location of the well does not change.
 - (o) Any non-functioning well shall be decommissioned according to the requirements of the Office of the State Engineer. In addition, all pumps and electrical connections shall be removed, and the shaft shall be permanently sealed with a metal cap.
 - (p) A copy of this ordinance shall be filed with the Office of the State Engineer upon adoption of said ordinance by the governing body.

SECTION 4. Chapter 26 of the Roswell City Code is hereby amended by adding a new section 26-9 to read as follows:

Section 26-9. Commingling of water supplied by city water system and water supplied by domestic well prohibited

- (a) In order to avoid potential contamination of the City's water system, the commingling of water provided by the City's water system and water supplied by a domestic well is prohibited. To avoid potential contamination of the City's water system, the City may refuse to extend or continue water service to a property where a domestic well also supplies water.
- (b) The City may, as a condition of providing water to such a location, require the owner to install a backflow preventer in order to protect the drinking water system from cross-contamination from well water. The City may also require routine testing by a certified technician to ensure that the backflow preventers are functioning properly, and that the results of such testing be provided to the City within ten days from the date of testing.
- (c) Repairs to or replacement of malfunctioning backflow preventers shall be made within such time as the City Water Department supervisor shall direct.

SECTION 5. All ordinances or parts of ordinances in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or part of any ordinance heretofore repealed.

SECTION 6. If any section, paragraph, clause or provisions of this ordinance for any reason shall be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any other part of this ordinance.

SECTION 7. This ordinance shall be effective after five (5) days following its publication as required by law.

Underscoring indicates addition to existing Code section.

~~Strike through~~ indicates delete of an existing Code section.

PASSED, ADOPTED, SIGNED and APPROVED the ____ day of March, 2016.

CITY SEAL

Dennis Kintigh, Mayor

ATTEST:

Sharon Coll, City Clerk

VERSION 2
PROPOSED AMENDMENTS TO PROPOSED ORDINANCE NO. 16-05
RECOMMENDED FOR CONSIDERATION BY LEGAL COMMITTEE
FEBRUARY 25, 2016

1. Proposed amendment to proposed Code section 26-6:

26-6. Connection to city water distribution system required

Where a water distribution line is at or within three hundred (300) feet of the property boundary line, and the property is located within the corporate limits of the City of Roswell, the property owner must connect to the City of Roswell water system at said property owner's expense to the residence or building before a certificate of occupancy is issued: (1) unless otherwise provided under this article in the case of domestic wells, or (2) for all other non-domestic uses, unless the property owner has water rights that permit the drilling of wells for all or part of the intended use of the property. Nothing herein shall be construed to require a property owner to connect to the City water distribution system where water to the property is being furnished on the effective date of this ordinance under a permit issued by the State Engineer pursuant to NMSA 1978 §72-12-1.1.

2. Proposed amendment to proposed Code section 26-6, subsection (h) and (n), and the addition of a new subsection:

26-8. Restrictions on drilling of new domestic wells

.....

- (h) ~~In the event that the City Engineer denies authorization for a new domestic well permit, the applicant may request an informal hearing before the City Engineer.~~
- (1) If the City Engineer proposes denial of the application for a new domestic well, notice of such proposed denial shall be sent in writing to the applicant either by email or by regular mail. The notice shall specify the reason for the proposed denial. It shall further inform the applicant of the right to request a hearing before the City Engineer or a person designated by the City Engineer. The request for a hearing shall be in writing. The hearing shall be held no later than the date on which the City Engineer is required to act on the application under subsection (f).
 - (2) If the applicant fails to make a written request for a hearing within ten (10) days from the date of the notice of proposed denial, then the City Engineer may take action to deny the application, which action shall be final for administrative purposes.
 - (3) The purpose of the hearing is to allow the applicant the opportunity to show why the proposed denial should not become final and why the application should be granted instead, and to provide additional information in support of granting the application that was not available when the application was submitted. The hearing is not intended to be conducted in a formal manner.

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VERSION 2
PROPOSED AMENDMENTS TO PROPOSED ORDINANCE NO. 16-05
RECOMMENDED FOR CONSIDERATION BY LEGAL COMMITTEE
FEBRUARY 25, 2016

(n) ~~A well that replaces an existing or abandoned domestic well where the bore location of the well is changed shall be considered to be a new domestic well, and shall require completion of the same application for authorization for a new domestic well, and shall be subject to the same restrictions as the drilling of a new domestic well. Repairs to an existing domestic well to any extent shall not be considered to be a replacement well, so long as the bore location of the well does not change. Repairs to an existing domestic well to any extent shall not be considered to be a replacement well. A well that replaces an existing or abandoned domestic shall require that an application be made to the City Engineer under the provisions of this ordinance by the property owner. The City shall approve such application provided that the well will not be located within a contaminated area as described in subsection (d) of this section, and that the State Engineer has issued a permit under NMSA 1978 §72-12-1.1 to the property owner.~~

....

(q) The drilling of a new domestic well for the irrigation of non-commercial trees, lawn or garden uses authorized under the provisions of NMSA 1978 §72-12-1.1, shall require that an application be made to the City Engineer under the provisions of this ordinance by the property owner. The City shall approve such application, provided that (1) the property is no less than $\frac{3}{4}$ of an acre in size; (2) the well will not be located within a contaminated area as described in subsection (d) of this section; (3) the State Engineer has issued a permit for domestic irrigation use under NMSA 1978 §72-12-1.1 to the property owner; and (4) the well is not connected to the residence or the source of water supply to the residence or any other structures on the property.

....

Underscoring indicates addition to proposed Code section.
~~Strike through~~ indicates delete to proposed Code section.

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 4.

Meeting Date: 03/10/2016

COMMITTEE: Finance

CONTACT: Monica Garcia

CHAIR: Caleb Grant

ACTION REQUESTED:

Request to approve GSA Contract No. GS25F0062M – lease and maintenance agreement for multi-functional copier machines from PTS Office Systems, Inc.

BACKGROUND:

To consolidate and control costs of printing by removing individual printers and replacing with multi-functional copiers (copier/fax/scan/print) city-wide. Each department budgets for replacement of copiers, ink, color ink, toner, maintenance agreements and other expenses associated with copiers. In total the city owns 229 units which includes copiers, printers, fax machines. The lease would replace all of the units with 55 multi-functioning copiers. Please see breakdown of cost to the city at present:

- Copier/Printer - \$4,500
- Toner & Ink - \$109,100 per year
- Maintenance Agreements - \$3,600
- Total - \$117,200

Total savings - \$57,575 per year

FINANCIAL CONSIDERATION (See Fiscal Impact below)

FY2016 Budget (each department line item):

- General Supplies
- Office Supplies
- Equipment under \$500
- Equipment Maintenance

LEGAL REVIEW:

The City Attorney has reviewed the contract.

BOARD AND COMMITTEE ACTION:

Not applicable.

STAFF RECOMMENDATION:

City Council consideration of Lease & Maintenance Agreement from PTS Office Systems, Inc.

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 5.

Meeting Date: 03/10/2016

COMMITTEE: Legal

CONTACT: William Zarr

CHAIR: Jason Perry

ACTION REQUESTED:

Request approval to authorize Zachary Canright and Jared Putman, as individuals, to renew their current lease agreement on "T" Hangar Building No. 120, Space 3.

BACKGROUND:

Zachary Canright and Jared Putman lease the building for the purpose of aircraft storage and maintenance. 1,002 square feet. New rent amount is \$173.00 monthly; \$2,076.00 annually. Rent adjustment is 2.37%. Zachary Canright and Jared Putman have been customers since February 2015.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

Zachary Canright and Jared Putman new rent amount is \$173.00 monthly; \$2,076.00 annually. Rent adjustment is 2.37%. Term: April 1, 2016 through March 31, 2017.

LEGAL REVIEW:

The City Attorney has reviewed the requested actions.

BOARD AND COMMITTEE ACTION:

The Legal Committee recommended the City Council authorize approval at their March 10, 2016 meeting.

STAFF RECOMMENDATION:

Airport Staff recommends the approval of lease agreements and lease amendments as proposed.

Attachments

RIAC Lease - Zachary Canright

LEASE AGREEMENT

THIS LEASE executed in Roswell, New Mexico on this 10th day of March, 2016 by and between the CITY OF ROSWELL, NEW MEXICO, a municipal corporation, hereinafter "Landlord", and ZACHARY CANRIGHT and JARED PUTMAN, individuals, hereinafter "Tenant".

WHEREAS Landlord has agreed to lease to Tenant the real property described below, together with the improvements thereon, in Chaves County New Mexico, and Tenant has agreed to lease said real property and improvements from Landlord;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. GRANTING CLAUSE AND PREMISES. For the term, at the rent and otherwise upon the terms, provisions and conditions contained herein, Landlord hereby lets and leases unto Tenant the surface only to the following real property, together with all improvements located thereon:

"T" Hangar 120, Space 3 consisting of 1,002 square feet, more or less, located at the Roswell International Air Center, identified on a plat attached hereto and made a part hereof, identified and listed as Exhibit "A" (Premises).

2. TERM. The Lease term is for one (1) year, commencing on April 1, 2016 and ending March 31, 2017 unless sooner terminated by provision hereof.

3. RENT. Tenant agrees to pay to Landlord as rent the sum of Two Thousand, Seventy Six Dollars and No Cents (\$2,076.00), payable in 12 monthly installments of \$173.00. Rent and other fees are due on the first day of each month. If Tenant fails to pay all rent and other fees due for any month by the tenth calendar day of the month that said rent and fees are due, Tenant shall pay to Landlord an additional 2% finance charge, as a penalty, each month until the full amount of that month's rent is paid. This penalty shall be immediately payable without limiting Landlord in the exercise of any other right or remedy to which it may be entitled by reason of Tenant's failure to pay rent when due. All rent shall be paid to Landlord without abatement, reduction or set off of any kind except as herein specifically provided.

4. SECURITY DEPOSIT. Tenant has paid \$169.00 as security for Tenant's full and faithful performance of all terms of this lease. This amount shall be used by Landlord at the termination of this Lease Agreement toward a. payment for rent or penalties due Landlord, b. reimbursement of the costs of cleaning and repairing damages (beyond normal wear and tear) to the Premises and c. the cost of removal of any hazardous material not properly disposed of by Tenant. Landlord shall be the sole and reasonable judge of all cleaning and repairs required for the Premises and the amounts needed for these purposes. Upon termination or expiration of this Lease the security deposit shall first be applied to necessary cleaning and removal, repairs and the remaining balance, if any, may then be applied to rentals and penalties then owing to Landlord. Any refund of the security deposit due Tenant will be delivered or mailed in accordance with Paragraph 26 of this Agreement within 60 days after the termination of this Lease Agreement.

5. CONDITION OF PREMISES. Tenant has inspected Premises and accepts the Premises in its present condition "as is". Tenant acknowledges that any requirements for accessibility and/or public accommodation(s) are Tenant's responsibility. Tenant agrees that the Premises is in good repair and condition except as noted herein. Tenant agrees that, at the expiration of the term hereof, it shall yield up and deliver the Premises to

Landlord in as good repair and condition, broom clean, as when received, except for loss resulting from ordinary use and wear.

6. MAINTENANCE.

a. Tenant shall maintain the Premises in a safe and clean condition, in good order and repair. Tenant further agrees, at its sole cost and expense, to maintain the Premises, including improvements, in a clean and policed condition at all times and to keep trees, shrubbery, and grass irrigated, trimmed and attractively maintained.

b. Further, Tenant shall maintain and replace when necessary the plumbing and electrical systems as well as all glass, heating, air conditioning, and other similar fixtures and equipment located on or in any portion of the Premises.

c. Tenant shall make necessary corrections and/or adjustments to maintenance practices as inspections reasonably determine. Landlord shall be the sole and reasonable judge of the quality of maintenance and, upon written notice by Landlord to Tenant, Tenant shall be required to perform whatever maintenance Landlord deems reasonably necessary, provided, however, such maintenance shall be consistent in quality with that required of other City Tenants in comparable facilities. If said maintenance is not undertaken by Tenant within ten (10) days after the date Landlord gives Tenant written notice of corrections needed, Landlord shall have the right to enter upon the Premises and perform the necessary maintenance, the cost of which shall be two times the cost for parts and labor and borne by Tenant.

7. TAXES, LICENSES AND UTILITIES. During the term hereof, Tenant shall pay all taxes, licenses, charges, fees or assessments levied or to be levied upon personal-property, fixtures or equipment placed by Tenant upon said Premises, of whatsoever kind or nature, incident to or arising out of the conduct of Tenant's business. Failure to have an appropriate current license or permit shall be a breach of this Lease. Tenant shall pay all utilities used on the Premises, including but not limited to telephone, electricity, gas, and water.

8. PERSONAL PROPERTY AND FIXTURES OF TENANT. All personal property and fixtures of Tenant in the Premises shall be kept at the sole risk of Tenant, and Landlord shall not be liable for any damage thereto or to Premises or to Tenant for interruption of business or otherwise. Tenant hereby waives all causes or rights of recovery against Landlord, its agents, employees, invitees and tenants for any loss to such personal property and fixtures on the Premises or to consequential loss arising therefrom caused by fire or other casualty, whether negligently caused or not.

9. EQUIPMENT AND IMPROVEMENTS.

a. Except as otherwise provided herein, Tenant shall have the right to install such equipment as may be necessary for the conduct of its business on the Premises; and at the expiration or termination of the Lease Tenant shall have the right to remove all of such equipment installed by Tenant that is removable without damage to the Premises. Also Tenant shall, upon written demand by Landlord, at Tenant's sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by Tenant pursuant to this Paragraph 9.

b. Tenant shall not make, suffer or permit to be made, any major additions, alterations or improvements on the Premises (including but not limited to, installing carpeting, air conditioning, painting, or attaching anything to the walls other than by plug-in) without first obtaining the written consent of Landlord,

which consent Landlord may withhold in its sole and absolute discretion. In the event that the consent is given and Tenant makes any major alterations, additions or improvements, such work shall be done in such a manner that no mechanic's lien, materialman's lien or other lien of any kind shall be created against or imposed upon the Premises or any part thereof, and Tenant shall indemnify and save harmless Landlord from any and all liability and claims for damage of any kind and nature which may be made or accrue against Landlord on account of any such major alterations, additions or improvements. At the expiration or termination of this Lease such improvements shall become the property of Landlord and the value thereof will not be offset against any amounts claimed by Landlord as owing under the terms of this Lease. Tenant agrees to bear all costs and expenses incident to the occupancy and maintenance of the structure and improvements placed therein including snow clearance.

10. INSURANCE.

a. Landlord will provide fire and extended coverage to the Premises during the term of the Lease. Tenant agrees to reimburse Landlord for the amount of insurance premium based upon the pro-rata per square foot cost attributable to the Premises as determined and billed by Landlord. Tenant understands that fire and extended coverage does not cover the property of Tenant or any property on the premises that does not belong to Landlord.

b. Tenant shall maintain in full force and effect a policy or policies of general public liability insurance in which Landlord is named an additional insured to the extent of the liabilities assumed by Tenant hereunder, covering both parties against claims for injury, death or damage to persons or property occurring upon, in or about the Premises, in such limits as set forth in the New Mexico Tort Claims Act or as may be amended. Tenant shall provide Landlord written evidence of this insurance within thirty (30) days of the effective date of the Lease.

c. Landlord agrees to waive any rights of subrogation that it may have against Tenant in the event any insurance proceeds are paid to Landlord based upon any act or failure to act by Tenant. Tenant agrees to waive any rights of subrogation that it may have against Landlord in the event any insurance proceeds are paid to Tenant based upon any act or failure to act by Landlord.

11. DAMAGE OR DESTRUCTION OF PREMISES.

a. In the event the Premises are damaged by fire or other perils or casualty covered by fire and extended coverage insurance, Landlord may, in its sole and absolute discretion, repair or rebuild the same within a reasonable time after the event causing such damage. This Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate reduction of the rent from the date of damage and while such repairs are being made, such proportionate reduction to be based upon the extent to which the damage and making of such repairs shall reasonably interfere with the business carried on by Tenant in the Premises as determined by Landlord. If the damage is due to the fault or neglect of Tenant or its employees, as determined by Landlord in its sole discretion, there shall be no reduction of rent. Landlord may authorize or direct construction of an alternative structure or may elect to retain any insurance proceeds received by it if Landlord deems reconstruction or construction of an alternative structure to be impractical or unreasonable in its sole discretion.

b. In the event the Premises are damaged to any extent as a result of any cause other than the perils covered by fire and extended coverage insurance, Landlord shall in its sole discretion have the option to: (1.) to repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage, in which case this Lease shall continue in full force and effect, but the rent shall be proportionately reduced as provided above in 11a. during the period of such repair, reconstruction or restoration, or (2.) to give notice to Tenant at any time

within sixty (60) days after such damage occurs, terminating this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of giving to Tenant such notice of termination, this Lease shall terminate and all interests of Tenant in the Premises shall cease on the date so specified in such notice and Tenant shall pay the rent, as proportionately reduced, based upon the extent, if any, to which such damage interfered with the business carried on by Tenant in the Premises, up to the date of such termination.

c. With regard to Landlord's duty or option to repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage as provided in 11a. and b. above, Landlord shall act promptly and with due diligence, but Landlord shall not be responsible for delays caused by factors beyond Landlord's control, including but not limited to delays because of strikes, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other authority to act in a timely manner, or delays caused by contractors. If such delays occur, Tenant agrees that Landlord shall not be responsible for damages, nor shall Landlord be deemed to be in default under this Lease.

d. Landlord shall not be required to repair any damage by fire or other casualty, or to make any repair or replacements of any leasehold improvements, fixtures, or other personal property of Tenant.

12. **LIABILITY.** Landlord shall not be liable to Tenant or to Tenant's employees, customers, visitors or any other person or entity for any death or injury or damage to person or property arising from any cause whatsoever which shall occur in any manner in or about the Premises in connection with, or arising out of Tenant's operations and use of the Premises. Tenant agrees to indemnify and save harmless Landlord from any claim for death, injury, damage or loss which may occur in any manner in or about the Premises, unless such death, injury, damage or loss is proximately and solely caused by negligent act or omission to act of Landlord's Agents.

13. **CONDEMNATION OR GOVERNMENTAL TAKING.** In the event that the Premises or any portion thereof shall be condemned for public or quasi-public purpose, or shall be taken by any governmental authority in any manner whatsoever during the term hereof, the parties hereto agree to the following:

a. In the event that the Leased Premises shall be totally condemned or taken, or condemned or taken so as to render the remainder thereof unusable for purposes for which said Premises was leased, this Lease shall terminate as of the effective date of such condemnation or taking.

b. In the event that a portion of the leased Premises is condemned or taken, but such condemnation or taking does not render the remainder thereof unusable for the purposes for which the Premises was leased, Tenant's obligation under this Lease shall continue in full force and effect, but the amount of rent payable by Tenant shall be reduced in the proportion which the portion of the leased Premises condemned or taken bears to the total area of the leased Premises. In such event, Tenant shall bear any necessary costs of relocating its equipment and placing the remaining Premises in proper and usable condition.

c. In the event of total or partial condemnation or taking of the leased Premises as aforesaid, all compensation awarded or paid upon a total or partial taking of the Premises shall belong to Landlord and Tenant shall have no right or cause of action against Landlord; provided, however that Tenant shall be entitled to participate in any award to the extent that such award includes the loss, if any, sustained by Tenant as a result of the termination of this Lease or diminution of its leasehold estate and the value of any fixtures condemned or taken

if such fixtures were installed by Tenant and are located upon the Premises at the time of such condemnation or taking. Tenant reserves the right to proceed independently of Landlord with any claim for compensation for damages to which Tenant may become entitled by reason of such total or partial condemnation or taking.

14. CONDITIONS OF DEFAULT. If at any time during the term of this Lease, Tenant shall:

a. Default in the payment of any installment of rent or any other sums specifically to be paid by Tenant hereunder and such default shall not have been cured within ten (10) days after Landlord shall have given to Tenant written notice specifying such default; or

b. Default in the observance of any of the Tenants's covenants, agreements or obligations hereunder, other than the covenants to pay rent or any other sum herein specified to be paid by Tenant, and such default shall not have been cured within thirty (30) days after Landlord shall have given to Tenant written notice specifying such default; provided, however, that if the default complained of shall be of such nature that he same cannot be completely remedied or cured within such thirty (30) day period, then such default shall not be an enforceable default against Tenant for the purposes of this paragraph if Tenant shall have commenced curing such default within such thirty (30) day period and shall proceed with reasonable diligence and in good faith to remedy the default complained of; or

c. Finally and without further possibility of appeal or review (1.) be adjudicated bankrupt or insolvent, (2.) have a receiver or trustee appointed for all or substantially all of its business or assets, or (3.) suffer an order to be entered approving a petition filed against Tenant seeking reorganization of Tenant under the Federal Bankruptcy laws or any other applicable law or statute of the United States or any state thereof; or

d. Make an assignment for the benefit of its creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or arrangement under the Federal Bankruptcy law or other applicable law or statute of the United States or any state thereof, or shall file a petition to take advantage of any insolvency act or shall assent to the appointment of a receiver or trustee of all or a substantial part of its business and property; or

e. Leave the Premises vacant or deserted for a period of sixty (60) consecutive days; or

f. Use the Premises for purposes other than those set forth in Paragraph 18 hereof, or fail to use the Premises for any purpose for a period of sixty (60) consecutive days and such lack of use shall continue for thirty (30) days after Landlord has given Tenant written notice specifying the default.

15. REMEDIES OF LANDLORD FOR DEFAULT. If Tenant is in default of this Lease, then Landlord shall have the following remedies:

a. Landlord may sue to collect any and all sums which may accrue to Landlord by virtue of the provisions of this Lease and/or for any and all damage that may accrue by virtue of the breach of this Lease, Tenant hereby waiving all demands for rent;

b. Landlord may sue to restrain by injunction any violation or threatened violation of the covenants, conditions or provisions of this Lease;

c. Landlord may, without further notice to Tenant and without further demand for rent due or for the observance or performance of any of said terms, conditions or agreements, immediately re-enter the Leased Premises by force or otherwise, without being liable therefor, and remove all persons and property therefrom, using such force as may be necessary. If this Lease shall be terminated before its expiration by reason of Tenant's default, or if the Tenant shall abandon or vacate said Premises before the expiration of the term of this Lease, the same may be re-rented by Landlord (but Landlord shall not be obligated so to do) for such rent and upon such terms as Landlord may see fit and Tenant shall stand liable to Landlord for any deficiency. Any costs incurred in storing Tenant's property shall be considered additional damages recoverable by Landlord.

d. If Tenant shall at any time be in default in fulfilling any of the covenants of the Lease, Landlord may, but shall not be obligated so to do, and without notice to or demand upon Tenant, take or cause to be taken such action or make such payment as may be required by such covenant, at Tenant's risk and expense, and all expenses, costs and liabilities of Landlord incurred under this paragraph shall be deemed additional rent hereunder and shall be payable to Landlord on demand together with interest thereon at the rate of fifteen percent (15%) per annum.

e. The remedies of Landlord hereunder shall be cumulative and not exclusive of any other remedy hereunder or to which Landlord may be lawfully entitled. The failure of Landlord to insist upon strict performance of any of the covenants of this Lease or to exercise any option herein contained shall not be construed as a waiver or relinquishment for the future of such or any other covenant or option, nor shall the receipt by Landlord of rent with knowledge of any default by Tenant, or any other action of Landlord except a waiver expressed in writing signed by Landlord, be deemed a waiver of such default, nor shall the acceptance of any sum of rental less than the sum provided for in this Lease alter the rental terms hereof or absolve Tenant from its obligation to pay the full rental herein provided, but the acceptance of any lesser sum than the full rent herein stipulated shall be an acceptance of the amount paid on account of the full rent due.

16. LEGAL FEES. If any person not a party to this Lease shall institute an action against Tenant in which Landlord, involuntarily and without cause, shall be made a party defendant, Tenant shall indemnify and save Landlord harmless from all liabilities, loss damage and expense by reason thereof, including reasonable attorney's fees and all reasonable costs incurred by Landlord in such action. If any action shall be brought to recover any rental under this Lease, or for or on account of any other default/breach of or to enforce or interpret any of the terms, covenants or conditions of this Lease, or for the recovery of possession of the Premises, Landlord shall be entitled to recover from Tenant all reasonable attorney fees and costs.

17. BANKRUPTCY. If Tenant should be adjudged bankrupt, either voluntarily or involuntarily, Landlord shall have the option to pursue with the Court having jurisdiction all remedies to which Landlord may be entitled in law or equity. In no event shall Tenant's interests in this Lease be deemed to be an asset of Tenant.

18. USE OF THE PREMISES.

a. Tenant shall use the Leased Premises solely for the purpose of storage and maintenance of aircraft, together with such other related uses as shall be reasonably incidental thereto, and for no other purposes, and it shall not use the Leased Premises for any purpose prohibited by the laws of the United States and the State of New Mexico. Tenant shall be bound by the Roswell City Code or as may be amended from time to time and all applicable policies and procedures of the Roswell International Air Center ("RIAC").

b. Proper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description generated on or as a part of Tenant's occupancy of the Premises is the sole and absolute responsibility of Tenant. This responsibility extends to any materials of whatsoever kind, type or description generated on or as a part of Tenant's occupancy of the Premises that might be considered to be, to cause, or result in Foreign Object Damage (FOD). Tenant shall comply with all Federal, State and local regulations, laws and ordinances of the City of Roswell in disposal of any such materials. Improper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description, foreign object debris (fod), collectively, generated on or as a part of Tenant's occupancy of the Premises shall be grounds for the immediate Lease termination with or without process of law. Tenant represents to Landlord that it has not released any hazardous materials at the leased premises or contaminated them in any way. To the extent it is proven that hazardous materials have been released on the leased premises by Tenant, Tenant's employees or representatives during the term of Tenant's occupancy of the leased premises, Tenant hereby unconditionally agrees at its sole cost to defend, indemnify, protect and hold Landlord harmless from and against any bodily injury, death or property damage, including (1) environmental claims, (2) environmental expenses, including without limitation, the handling, investigation, treatment, storage decontamination, remediation, removal, transport or disposal of such hazardous materials, and (3) liabilities, losses, damages, fines, penalties, charges, orders, judgments, or liens caused by such release.

c. Tenant shall operate its business in such a manner as to prevent the performance of any act or creation or maintenance of any thing which, in the opinion of Landlord, is or may become a nuisance or otherwise noxious or objectionable condition including, but not limited to, any act or thing resulting in noise, vibration, shock, smoke, dust, odor or other forms of air pollution, or other condition, substance or element in such amount as to affect areas surrounding or adjoining the Premises. Landlord shall be the sole and reasonable judge as to whether or not any act done or thing created or maintained by Tenant on the Premises is or may become a nuisance or otherwise noxious or objectionable condition, and Tenant agrees to abide by Landlord's decision and act in accordance with its directions with respect thereto.

d. Landlord reserves the right to take any action it considers necessary to protect the aerial approaches to the RIAC's airport against obstruction, and together with the right to prevent Tenant from erecting or permitting to be erected any building or other structure on the Premises which, in the opinion of Landlord, would limit the usefulness of the airport or constitute a hazard to aircraft or conflict with a current restriction or master plan.

e. Tenant shall be responsible for the security of the leased premises and gate (gate 12) providing egress thereto. Privately owned or company vehicles are authorized in the immediate T-Hangar area and The City Code Book, Chapter 5, prohibiting uncontrolled traffic on the Aircraft Operating Area (AOA) shall be observed in all other portions of the AOA. Overnight parking of vehicles outside of the T-Hangar shall not be permitted. The property will not be used for vehicle storage except for vehicle storage incident to aircraft use. Use of premises for Commercial Aviation activities as defined in the City of Roswell Code Book, Chapter 5, is denied.

f. Sale of Tenant's registered aircraft shall effectively terminate this lease in the case of a one aircraft hangar. Tenant shall have thirty (30) days from date of sale in which to purchase a suitable replacement and register it in the State of New Mexico to retain aircraft storage rights in the leased premises in the case of a one aircraft hangar. In the case of multiple occupants and aircraft in a leased area, the sale of any one aircraft requires

that Tenant notify the Air Center Manager's office immediately upon any such occurrence for security and lease modification purposes.

19. NONDISCRIMINATION PROVISIONS. Tenant shall use the Premises in compliance with all requirements imposed by or pursuant to Nondiscrimination in Federally Assisted Programs of the Department of Transportation 49 CFR 21. Landlord shall itself comply with these requirements in its leasing activities.

20. DOMINANT PROVISIONS. The parties acknowledge that the Leased Premises are a part of the RIAC and are therefore subject to the provisions of the Indenture between the United States of America and the City of Roswell, dated 24 January 1968, and filed for record in Book 248, Page 901, Office of the County Clerk, Chaves County, New Mexico and any other agreements or understandings. The provisions of the above described indenture are hereby incorporated herein by reference and accepted as binding by the parties hereto.

21. ACCESS TO/ INSPECTION OF PREMISES. Upon giving reasonable notice to Tenant, Landlord and the Federal Aviation Administration, their agents, or contractors may enter upon the Premises during Tenant's regular business hours and have free access to all buildings and other improvements located thereon for the purpose of inspecting the condition thereof or exercising any right or power reserved to Landlord or the Federal Aviation Administration under the terms and provisions of this Lease.

22. ASSIGNMENT AND SUBLEASE. Tenant shall not assign this Lease, in whole or in part, nor sublet all or any part of the Premises.

23. HOLDOVER. In the event Tenant remains in possession of Premises after the expiration or termination of this Lease, Tenant shall be deemed a tenant from month to month only, at the rental provided for in this Lease plus an additional 5% and Tenant's occupancy shall be governed in all other provisions hereof, except as to the duration of the term, by the provisions of this Lease.

24. INTERPRETATION OF LEASE AGREEMENT. Nothing in this Lease Agreement shall be construed or interpreted as limiting, relinquishing or waiving of any rights of ownership enjoyed by Landlord in the Premises; or waiving or limiting Landlord's authority or control over the management, operation or maintenance of property, except as specifically provided for in this Lease Agreement; or impairing governmental rights and police powers of Landlord.

25. PARAGRAPH HEADINGS. The paragraph headings contained herein are for convenience and in reference and are not intended to define or limit the scope of any provision of this Lease.

26. NOTICES.

a. All notices, requests or other communications to Landlord shall be given by regular and certified mail addressed to the following:

Air Center Manager
1 Jerry Smith Circle
Roswell, NM 88203

b. All notices, requests or other communications to Tenant shall be given by regular and certified

mail addressed to the following:

Zachary Canright
907 Pearson Dr.
Roswell, NM 88201

27. EFFECT. The terms and provisions hereof shall extend to and be binding upon the successors and assigns of the parties hereto.

28. WAIVERS. One or more waivers of any covenant, term or condition of this Lease shall not be construed as a waiver of a subsequent default or breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

29. GOVERNING LAW; VENUE. This Lease and the rights and obligations of the parties hereunder shall be governed by New Mexico law. Any suit brought by either party regarding this agreement or default or breach thereof shall be filed in the courts of Chaves County New Mexico.

30. TERMINATION. This Lease may be terminated by either party by giving thirty (30) days written notice.

31. ENTIRE AGREEMENT AND AMENDMENT. This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, with all negotiations, considerations, and representations between the parties having been incorporated herein. No course of prior dealings between the parties shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Lease Agreement other than those specifically set forth herein. This Lease Agreement is the entire Agreement and may be amended only in writing signed by Tenant and approved by Landlord's Governing Body.

IN WITNESS WHEREOF, this Lease Agreement is executed this _____ day of March, 2016.

CITY SEAL

LANDLORD:
CITY OF ROSWELL, NEW MEXICO

Dennis J. Kintigh, Mayor

TENANT:
ZACHARY CANRIGHT and
JARED PUTMAN

ATTEST:

Sharon Coll, City Clerk

Zachary Canright

Jared Putman

EXHIBIT "A"

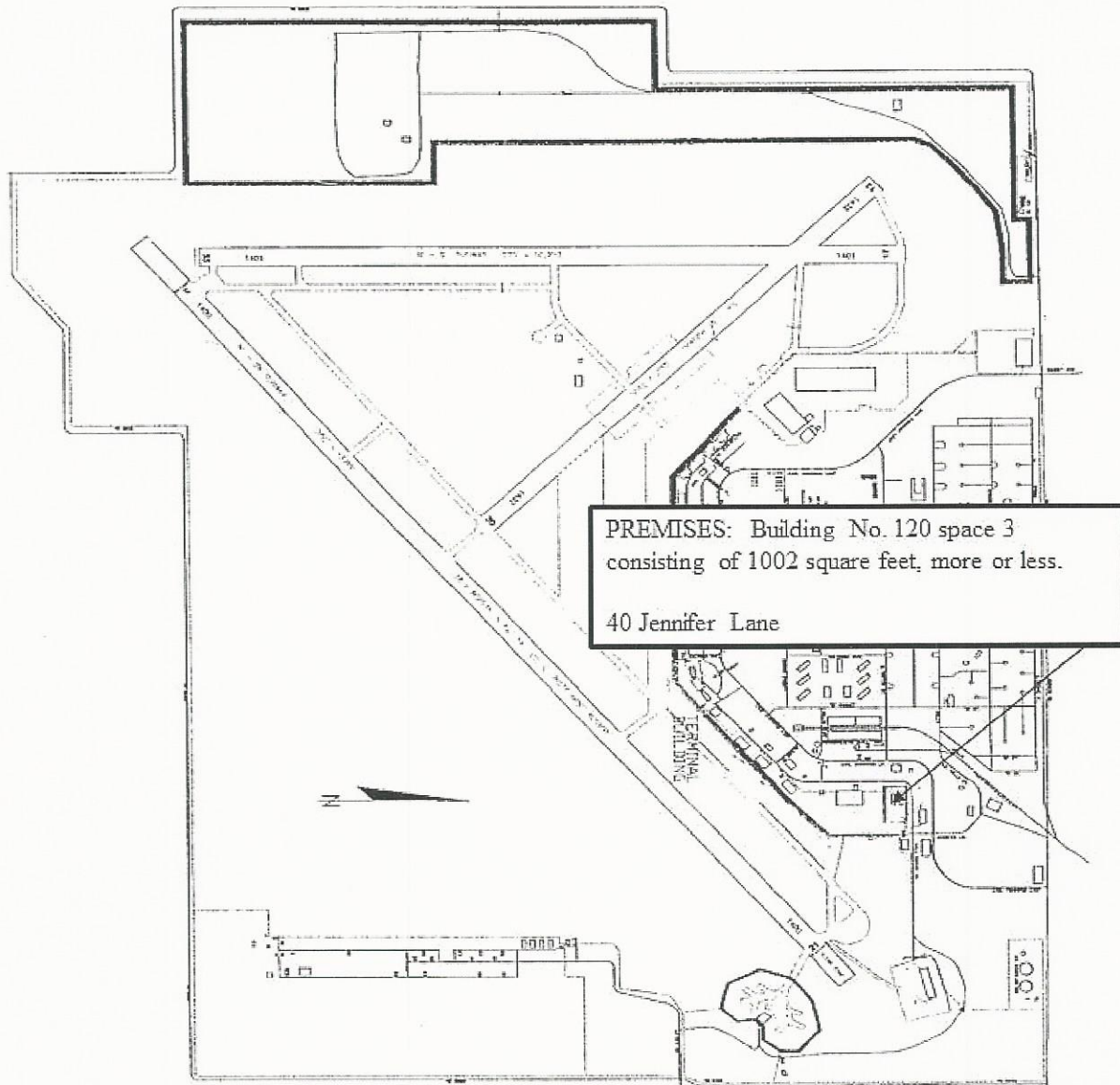


EXHIBIT "A"

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 6.

Meeting Date: 03/10/2016

COMMITTEE: Legal

CONTACT: William Zarr

CHAIR: Jason Perry

ACTION REQUESTED:

Request to authorize Thurston Woods, an individual, to renew his current lease agreement on a portion of Building No. 1776.

BACKGROUND:

Thurston Woods leases the building for the purpose of storage of personal items. 1,798 square feet. New rent amount is \$167.00 monthly; \$2,004.00 annually. Rent adjustment is 2.45%. Thurston Woods has been a customer since April 2010.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

Thurston Woods new rent amount is \$167.00 monthly; \$2,004.00 annually. Rent adjustment is 2.45%. Term: April 1, 2016 through March 31, 2017.

LEGAL REVIEW:

The City Attorney has reviewed the requested actions.

BOARD AND COMMITTEE ACTION:

The Legal Committee recommended the City Council authorize approval at their March 10, 2016 meeting.

STAFF RECOMMENDATION:

Airport Staff recommends the approval of lease agreements and lease amendments as proposed.

Attachments

RIAC Lease Thurston Woods

LEASE AGREEMENT

THIS LEASE executed in Roswell, New Mexico on this 10th day of March, 2016 by and between the CITY OF ROSWELL, NEW MEXICO, a municipal corporation, hereinafter "Landlord", and THURSTON WOODS, an individual, hereinafter "Tenant".

WHEREAS Landlord has agreed to lease to Tenant the real property described below, together with the improvements thereon, in Chaves County New Mexico, and Tenant has agreed to lease said real property and improvements from Landlord;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. GRANTING CLAUSE AND PREMISES. For the term, at the rent and otherwise upon the terms, provisions and conditions contained herein, Landlord hereby lets and leases unto Tenant the surface only to the following real property, together with all improvements located thereon:

A portion of Building No. 1776, consisting of 1,798 square feet, more or less, located at the Roswell International Air Center, identified on a plat attached hereto and made a part hereof, identified and listed as Exhibit "A" (Premises).

2. TERM. The Lease term is for one (1) year, commencing on April 1, 2016 and ending March 31, 2017 unless sooner terminated by provision hereof.

3. RENT. Tenant agrees to pay to Landlord as rent the sum of Two Thousand, Four Dollars and No Cents (\$2,004.00), payable in 12 monthly installments of \$167.00. Rent and other fees are due on the first day of each month. If Tenant fails to pay all rent and other fees due for any month by the tenth calendar day of the month that said rent and fees are due, Tenant shall pay to Landlord an additional 2% finance charge, as a penalty, each month until the full amount of that month's rent is paid. This penalty shall be immediately payable without limiting Landlord in the exercise of any other right or remedy to which it may be entitled by reason of Tenant's failure to pay rent when due. All rent shall be paid to Landlord without abatement, reduction or set off of any kind except as herein specifically provided.

4. SECURITY DEPOSIT. Tenant has paid \$140.00 in advance as security for Tenant's full and faithful performance of all terms of this lease. This amount shall be used by Landlord at the termination of this Lease Agreement toward a. payment for rent or penalties due Landlord, b. reimbursement of the costs of cleaning and repairing damages (beyond normal wear and tear) to the Premises and c. the cost of removal of any hazardous material not properly disposed of by Tenant. Landlord shall be the sole and reasonable judge of all cleaning and repairs required for the Premises and the amounts needed for these purposes. Upon termination or expiration of this Lease the security deposit shall first be applied to necessary cleaning and removal, repairs and the remaining balance, if any, may then be applied to rentals and penalties then owing to Landlord. Any refund of the security deposit due Tenant will be delivered or mailed in accordance with Paragraph 26 of this Agreement within 60 days after the termination of this Lease Agreement.

5. CONDITION OF PREMISES. Tenant has inspected Premises and accepts the Premises in its present condition "as is". Tenant acknowledges that any requirements for accessibility and/or public accommodation(s) are Tenant's responsibility. Tenant agrees that the Premises is in good repair and condition except as noted herein. Tenant agrees that, at the expiration of the term hereof, it shall yield up and deliver the Premises to

Landlord in as good repair and condition, broom clean, as when received, except for loss resulting from ordinary use and wear.

6. MAINTENANCE.

a. Tenant shall maintain the Premises in a safe and clean condition, in good order and repair. Tenant further agrees, at its sole cost and expense, to maintain the Premises, including improvements, in a clean and policed condition at all times.

b. Further, Tenant shall maintain and replace when necessary the plumbing and electrical systems as well as all glass, heating, air conditioning, and other similar fixtures and equipment located on or in any portion of the Premises.

c. Tenant shall make necessary corrections and/or adjustments to maintenance practices as inspections reasonably determine. Landlord shall be the sole and reasonable judge of the quality of maintenance and, upon written notice by Landlord to Tenant, Tenant shall be required to perform whatever maintenance Landlord deems reasonably necessary, provided, however, such maintenance shall be consistent in quality with that required of other City Tenants in comparable facilities. If said maintenance is not undertaken by Tenant within ten (10) days after the date Landlord gives Tenant written notice of corrections needed, Landlord shall have the right to enter upon the Premises and perform the necessary maintenance, the cost of which shall be two times the cost for parts and labor and borne by Tenant.

7. TAXES, LICENSES AND UTILITIES. During the term hereof, Tenant shall pay all taxes, licenses, charges, fees or assessments levied or to be levied upon personal-property, fixtures or equipment placed by Tenant upon said Premises, of whatsoever kind or nature, incident to or arising out of the conduct of Tenant's business. Failure to have an appropriate current license or permit shall be a breach of this Lease. Tenant shall pay all utilities used on the Premises, including but not limited to telephone, electricity, gas, and water.

8. PERSONAL PROPERTY AND FIXTURES OF TENANT. All personal property and fixtures of Tenant in the Premises shall be kept at the sole risk of Tenant, and Landlord shall not be liable for any damage thereto or to Premises or to Tenant for interruption of business or otherwise. Tenant hereby waives all causes or rights of recovery against Landlord, its agents, employees, invitees and tenants for any loss to such personal property and fixtures on the Premises or to consequential loss arising therefrom caused by fire or other casualty, whether negligently caused or not.

9. EQUIPMENT AND IMPROVEMENTS.

a. Except as otherwise provided herein, Tenant shall have the right to install such equipment as may be necessary for the conduct of its business on the Premises; and at the expiration or termination of the Lease Tenant shall have the right to remove all of such equipment installed by Tenant that is removable without damage to the Premises. Also Tenant shall, upon written demand by Landlord, at Tenant's sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by Tenant pursuant to this Paragraph 9.

b. Tenant shall not make, suffer or permit to be made, any major additions, alterations or improvements on the Premises (including but not limited to, installing carpeting, air conditioning, painting, or attaching anything to the walls other than by plug-in) without first obtaining the written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. In the event that the consent is given and Tenant makes any major alterations, additions or improvements, such work shall be done in such a manner

that no mechanic's lien, materialman's lien or other lien of any kind shall be created against or imposed upon the Premises or any part thereof, and Tenant shall indemnify and save harmless Landlord from any and all liability and claims for damage of any kind and nature which may be made or accrue against Landlord on account of any such major alterations, additions or improvements. At the expiration or termination of this Lease such improvements shall become the property of Landlord and the value thereof will not be offset against any amounts claimed by Landlord as owing under the terms of this Lease. Tenant agrees to bear all costs and expenses incident to the occupancy and maintenance of the structure and improvements placed therein including snow clearance.

10. INSURANCE. Tenant shall maintain in full force and effect a policy or policies of general public liability insurance in which Landlord is named an additional insured to the extent of the liabilities assumed by Tenant hereunder, covering both parties against claims for injury, death or damage to persons or property occurring upon, in or about the Premises, in such limits as set forth in the New Mexico Tort Claims Act or as may be amended. Tenant shall provide Landlord written evidence of this insurance within thirty (30) days of the effective date of the Lease.

11. DAMAGE OR DESTRUCTION OF PREMISES.

a. In the event the Premises are damaged by fire or other perils or casualty covered by fire and extended coverage insurance, Landlord may, in its sole and absolute discretion, repair or rebuild the same within a reasonable time after the event causing such damage. This Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate reduction of the rent from the date of damage and while such repairs are being made, such proportionate reduction to be based upon the extent to which the damage and making of such repairs shall reasonably interfere with the business carried on by Tenant in the Premises as determined by Landlord. If the damage is due to the fault or neglect of Tenant or its employees, as determined by Landlord in its sole discretion, there shall be no reduction of rent. Landlord may authorize or direct construction of an alternative structure or may elect to retain any insurance proceeds received by it if Landlord deems reconstruction or construction of an alternative structure to be impractical or unreasonable in its sole discretion.

b. In the event the Premises are damaged to any extent as a result of any cause other than the perils covered by fire and extended coverage insurance, Landlord shall in its sole discretion have the option to: (1.) to repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage, in which case this Lease shall continue in full force and effect, but the rent shall be proportionately reduced as provided above in 11a. during the period of such repair, reconstruction or restoration, or (2.) to give notice to Tenant at any time within sixty (60) days after such damage occurs, terminating this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of giving to Tenant such notice of termination, this Lease shall terminate and all interests of Tenant in the Premises shall cease on the date so specified in such notice and Tenant shall pay the rent, as proportionately reduced, based upon the extent, if any, to which such damage interfered with the business carried on by Tenant in the Premises, up to the date of such termination.

c. With regard to Landlord's duty or option to repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage as provided in 11a. and b. above, Landlord shall act promptly and with due diligence, but Landlord shall not be responsible for delays caused by factors beyond Landlord's control, including but not limited to delays because of strikes, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other authority to act in a timely manner, or delays caused by contractors.

If such delays occur, Tenant agrees that Landlord shall not be responsible for damages, nor shall Landlord be deemed to be in default under this Lease.

d. Landlord shall not be required to repair any damage by fire or other casualty, or to make any repair or replacements of any leasehold improvements, fixtures, or other personal property of Tenant.

12. **LIABILITY.** Landlord shall not be liable to Tenant or to Tenant's employees, customers, visitors or any other person or entity for any death or injury or damage to person or property arising from any cause whatsoever which shall occur in any manner in or about the Premises in connection with, or arising out of Tenant's operations and use of the Premises. Tenant agrees to indemnify and save harmless Landlord from any claim for death, injury, damage or loss which may occur in any manner in or about the Premises, unless such death, injury, damage or loss is proximately and solely caused by negligent act or omission to act of Landlord's Agents.

13. **CONDEMNATION OR GOVERNMENTAL TAKING.** In the event that the Premises or any portion thereof shall be condemned for public or quasi-public purpose, or shall be taken by any governmental authority in any manner whatsoever during the term hereof, the parties hereto agree to the following:

a. In the event that the Leased Premises shall be totally condemned or taken, or condemned or taken so as to render the remainder thereof unusable for purposes for which said Premises was leased, this Lease shall terminate as of the effective date of such condemnation or taking.

b. In the event that a portion of the leased Premises is condemned or taken, but such condemnation or taking does not render the remainder thereof unusable for the purposes for which the Premises was leased, Tenant's obligation under this Lease shall continue in full force and effect, but the amount of rent payable by Tenant shall be reduced in the proportion which the portion of the leased Premises condemned or taken bears to the total area of the leased Premises. In such event, Tenant shall bear any necessary costs of relocating its equipment and placing the remaining Premises in proper and usable condition.

c. In the event of total or partial condemnation or taking of the leased Premises as aforesaid, all compensation awarded or paid upon a total or partial taking of the Premises shall belong to Landlord and Tenant shall have no right or cause of action against Landlord; provided, however that Tenant shall be entitled to participate in any award to the extent that such award includes the loss, if any, sustained by Tenant as a result of the termination of this Lease or diminution of its leasehold estate and the value of any fixtures condemned or taken if such fixtures were installed by Tenant and are located upon the Premises at the time of such condemnation or taking. Tenant reserves the right to proceed independently of Landlord with any claim for compensation for damages to which Tenant may become entitled by reason of such total or partial condemnation or taking.

14. **CONDITIONS OF DEFAULT.** If at any time during the term of this Lease, Tenant shall:

a. Default in the payment of any installment of rent or any other sums specifically to be paid by Tenant hereunder and such default shall not have been cured within ten (10) days after Landlord shall have given to Tenant written notice specifying such default; or

b. Default in the observance of any of the Tenants's covenants, agreements or obligations hereunder, other than the covenants to pay rent or any other sum herein specified to be paid by Tenant, and such

default shall not have been cured within thirty (30) days after Landlord shall have given to Tenant written notice specifying such default; provided, however, that if the default complained of shall be of such nature that he same cannot be completely remedied or cured within such thirty (30) day period, then such default shall not be an enforceable default against Tenant for the purposes of this paragraph if Tenant shall have commenced curing such default within such thirty (30) day period and shall proceed with reasonable diligence and in good faith to remedy the default complained of; or

c. Finally and without further possibility of appeal or review (1.) be adjudicated bankrupt or insolvent, (2.) have a receiver or trustee appointed for all or substantially all of its business or assets, or (3.) suffer an order to be entered approving a petition filed against Tenant seeking reorganization of Tenant under the Federal Bankruptcy laws or any other applicable law or statute of the United States or any state thereof; or

d. Make an assignment for the benefit of its creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or arrangement under the Federal Bankruptcy law or other applicable law or statute of the United States or any state thereof, or shall file a petition to take advantage of any insolvency act or shall assent to the appointment of a receiver or trustee of all or a substantial part of its business and property; or

e. Leave the Premises vacant or deserted for a period of sixty (60) consecutive days; or

f. Use the Premises for purposes other than those set forth in Paragraph 18 hereof, or fail to use the Premises for any purpose for a period of sixty (60) consecutive days and such lack of use shall continue for thirty (30) days after Landlord has given Tenant written notice specifying the default.

15. REMEDIES OF LANDLORD FOR DEFAULT. If Tenant is in default of this Lease, then Landlord shall have the following remedies:

a. Landlord may sue to collect any and all sums which may accrue to Landlord by virtue of the provisions of this Lease and/or for any and all damage that may accrue by virtue of the breach of this Lease, Tenant hereby waiving all demands for rent;

b. Landlord may sue to restrain by injunction any violation or threatened violation of the covenants, conditions or provisions of this Lease;

c. Landlord may, without further notice to Tenant and without further demand for rent due or for the observance or performance of any of said terms, conditions or agreements, immediately re-enter the Leased Premises by force or otherwise, without being liable therefor, and remove all persons and property therefrom, using such force as may be necessary. If this Lease shall be terminated before its expiration by reason of Tenant's default, or if the Tenant shall abandon or vacate said Premises before the expiration of the term of this Lease, the same may be re-rented by Landlord (but Landlord shall not be obligated so to do) for such rent and upon such terms as Landlord may see fit and Tenant shall stand liable to Landlord for any deficiency. Any costs incurred in storing Tenant's property shall be considered additional damages recoverable by Landlord.

d. If Tenant shall at any time be in default in fulfilling any of the covenants of the Lease, Landlord may, but shall not be obligated so to do, and without notice to or demand upon Tenant, take or cause to be taken such action or make such payment as may be required by such covenant, at Tenant's risk and expense, and all expenses, costs and liabilities of Landlord incurred under this paragraph shall be deemed

additional rent hereunder and shall be payable to Landlord on demand together with interest thereon at the rate of fifteen percent (15%) per annum.

e. The remedies of Landlord hereunder shall be cumulative and not exclusive of any other remedy hereunder or to which Landlord may be lawfully entitled. The failure of Landlord to insist upon strict performance of any of the covenants of this Lease or to exercise any option herein contained shall not be construed as a waiver or relinquishment for the future of such or any other covenant or option, nor shall the receipt by Landlord of rent with knowledge of any default by Tenant, or any other action of Landlord except a waiver expressed in writing signed by Landlord, be deemed a waiver of such default, nor shall the acceptance of any sum of rental less than the sum provided for in this Lease alter the rental terms hereof or absolve Tenant from its obligation to pay the full rental herein provided, but the acceptance of any lesser sum than the full rent herein stipulated shall be an acceptance of the amount paid on account of the full rent due.

16. LEGAL FEES. If any person not a party to this Lease shall institute an action against Tenant in which Landlord, involuntarily and without cause, shall be made a party defendant, Tenant shall indemnify and save Landlord harmless from all liabilities, loss damage and expense by reason thereof, including reasonable attorney's fees and all reasonable costs incurred by Landlord in such action. If any action shall be brought to recover any rental under this Lease, or for or on account of any other default/breach of or to enforce or interpret any of the terms, covenants or conditions of this Lease, or for the recovery of possession of the Premises, Landlord shall be entitled to recover from Tenant all reasonable attorney fees and costs.

17. BANKRUPTCY. If Tenant should be adjudged bankrupt, either voluntarily or involuntarily, Landlord shall have the option to pursue with the Court having jurisdiction all remedies to which Landlord may be entitled in law or equity. In no event shall Tenant's interests in this Lease be deemed to be an asset of Tenant.

18. USE OF THE PREMISES.

a. Tenant shall use the Leased Premises solely for the purpose of storage of personal items, together with such other related uses as shall be reasonably incidental thereto, and for no other purposes, and it shall not use the Leased Premises for any purpose prohibited by the laws of the United States and the State of New Mexico. Tenant shall be bound by the Roswell City Code or as may be amended from time to time and all applicable policies and procedures of the Roswell International Air Center ("RIAC").

b. Proper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description generated on or as a part of Tenant's occupancy of the Premises is the sole and absolute responsibility of Tenant. This responsibility extends to any materials of whatsoever kind, type or description generated on or as a part of Tenant's occupancy of the Premises that might be considered to be, to cause, or result in Foreign Object Damage (FOD). Tenant shall comply with all Federal, State and local regulations, laws and ordinances of the City of Roswell in disposal of any such materials. Improper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description, foreign object debris (fod), collectively generated on or as a part of Tenant's occupancy of the Premises shall be grounds for the immediate Lease termination with or without process of law. Tenant represents to Landlord that it has not released any hazardous materials at or contaminated the leased premises. To the extent it is proven that hazardous materials have been released on the leased premises by Tenant, Tenant's employees or representatives during the term of Tenant's occupancy of the leased premises, Tenant hereby unconditionally agrees at its sole cost to defend, indemnify, protect and hold Landlord harmless from and against any bodily injury, death or property damage, including (1) environmental claims, (2) environmental expenses, including

without limitation, the handling, investigation, treatment, storage decontamination, remediation, removal, transport or disposal of such hazardous materials, and (3) liabilities, losses, damages, fines, penalties, charges, orders, judgments, or liens caused by such release.

c. Tenant shall operate its business in such a manner as to prevent the performance of any act or creation or maintenance of any thing which, in the opinion of Landlord, is or may become a nuisance or otherwise noxious or objectionable condition including, but not limited to, any act or thing resulting in noise, vibration, shock, smoke, dust, odor or other forms of air pollution, or other condition, substance or element in such amount as to affect areas surrounding or adjoining the Premises. Landlord shall be the sole and reasonable judge as to whether or not any act done or thing created or maintained by Tenant on the Premises is or may become a nuisance or otherwise noxious or objectionable condition, and Tenant agrees to abide by Landlord's decision and act in accordance with its directions with respect thereto.

d. Landlord reserves the right to take any action it considers necessary to protect the aerial approaches to the RIAC's airport against obstruction, and together with the right to prevent Tenant from erecting or permitting to be erected any building or other structure on the Premises which, in the opinion of Landlord, would limit the usefulness of the airport or constitute a hazard to aircraft or conflict with a current restriction or master plan.

19. NONDISCRIMINATION PROVISIONS. Tenant shall use the Premises in compliance with all requirements imposed by or pursuant to Nondiscrimination in Federally Assisted Programs of the Department of Transportation 49 CFR 21. Landlord shall itself comply with these requirements in its leasing activities.

20. DOMINANT PROVISIONS. The parties acknowledge that the Leased Premises are a part of the RIAC and are therefore subject to the provisions of the Indenture between the United States of America and the City of Roswell, dated 24 January 1968, and filed for record in Book 248, Page 901, Office of the County Clerk, Chaves County, New Mexico and any other agreements or understandings. The provisions of the above described indenture are hereby incorporated herein by reference and accepted as binding by the parties hereto.

21. ACCESS TO INSPECTION OF PREMISES. Upon giving reasonable notice to Tenant, Landlord and the Federal Aviation Administration, their agents, or contractors may enter upon the Premises during Tenant's regular business hours and have free access to all buildings and other improvements located thereon for the purpose of inspecting the condition thereof or exercising any right or power reserved to Landlord or the Federal Aviation Administration under the terms and provisions of this Lease.

22. ASSIGNMENT AND SUBLEASE. Tenant shall not assign this Lease, in whole or in part, nor sublet all or any part of the Premises.

23. HOLDOVER. In the event Tenant remains in possession of Premises after the expiration or termination of this Lease, Tenant shall be deemed a tenant from month to month only, at the rental provided for in this Lease plus an additional 5% and Tenant's occupancy shall be governed in all other provisions hereof, except as to the duration of the term, by the provisions of this Lease.

24. INTERPRETATION OF LEASE AGREEMENT. Nothing in this Lease Agreement shall be construed or interpreted as limiting, relinquishing or waiving of any rights of ownership enjoyed by Landlord in the Premises; or waiving or limiting Landlord's authority or control over the management, operation or maintenance of property, except as specifically provided for in this Lease Agreement; or impairing

governmental rights and police powers of Landlord.

25. PARAGRAPH HEADINGS. The paragraph headings contained herein are for convenience and in reference and are not intended to define or limit the scope of any provision of this Lease.

26. NOTICES.

a. All notices, requests or other communications to Landlord shall be given by regular and certified mail addressed to the following:

Air Center Manager
1 Jerry Smith Circle
Roswell, NM 88203

b. All notices, requests or other communications to Tenant shall be given by regular and certified mail addressed to the following:

Thurston Woods
2522 Mimosa Dr.
Roswell, NM 88201

27. EFFECT. The terms and provisions hereof shall extend to and be binding upon the successors and assigns of the parties hereto.

28. WAIVERS. One or more waivers of any covenant, term or condition of this Lease shall not be construed as a waiver of a subsequent default or breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

29. GOVERNING LAW; VENUE. This Lease and the rights and obligations of the parties hereunder shall be governed by New Mexico law. Any suit brought by either party regarding this agreement or default or breach thereof shall be filed in the courts of Chaves County New Mexico.

30. TERMINATION. This Lease may be terminated by either party by giving thirty (30) days written notice.

31. ENTIRE AGREEMENT AND AMENDMENT. This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, with all negotiations, considerations, and representations between the parties having been incorporated herein. No course of prior dealings between the parties shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Lease Agreement other than those specifically set forth herein. This Lease Agreement is the entire Agreement and may be amended only in writing signed by Tenant and approved by Landlord's Governing Body.

IN WITNESS WHEREOF, this Lease Agreement is executed this ____ day of March, 2016.

CITY SEAL

LANDLORD:
CITY OF ROSWELL, NEW MEXICO

Dennis J. Kintigh, Mayor

ATTEST:

Sharon Coll, City Clerk

TENANT:
THURSTON WOODS

Thurston Woods

EXHIBIT "A"

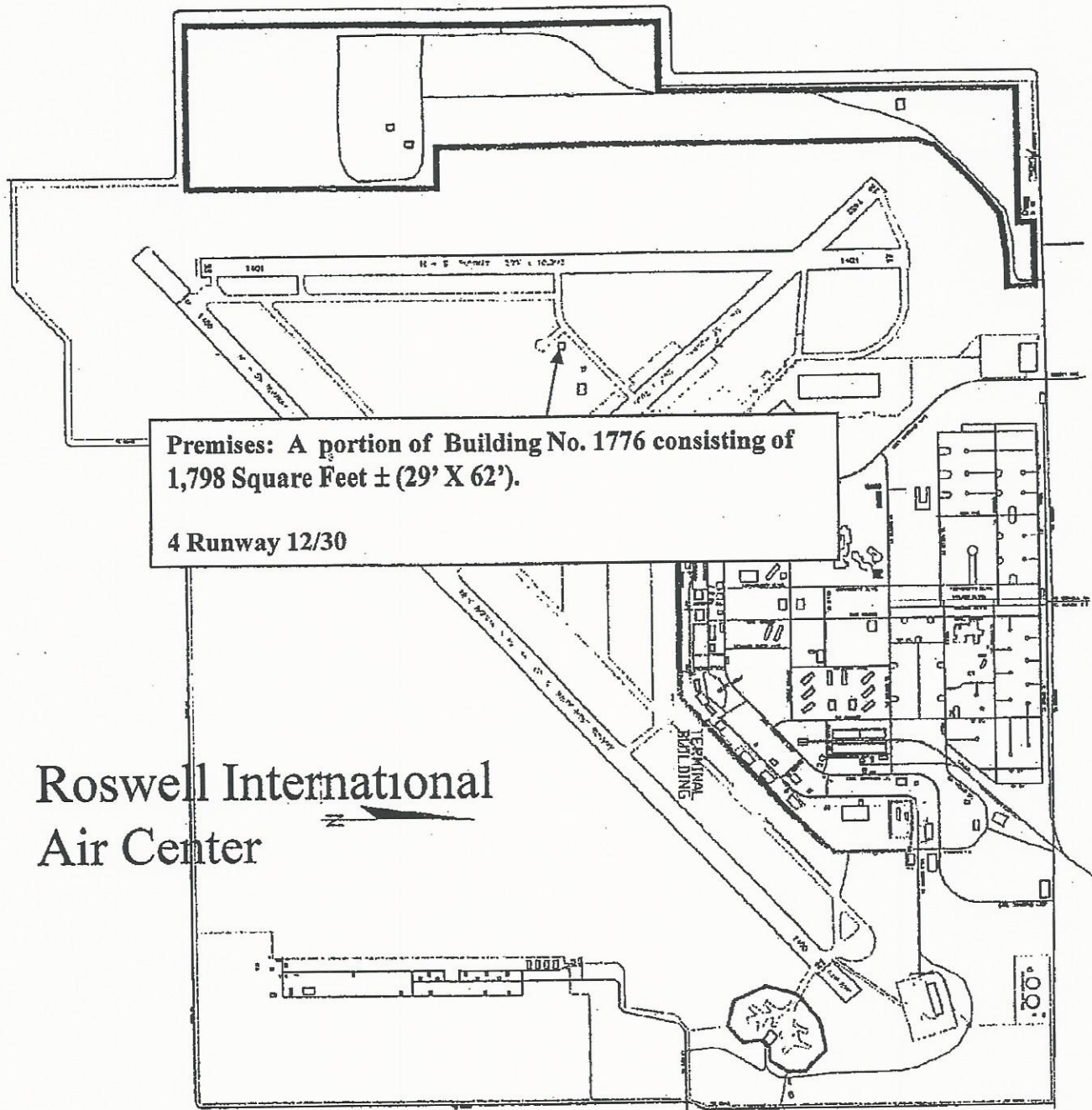


EXHIBIT "A"

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 7.

Meeting Date: 03/10/2016

COMMITTEE: Legal

CONTACT: William Zarr

CHAIR: Jason Perry

ACTION REQUESTED:

Request to authorize Zen Sportz, Inc., a New Mexico Corporation, to renew their current lease agreement on office space in Building No. 1, the Terminal.

BACKGROUND:

Zen Sportz, Inc., leases the office space for the purpose of a business office. 100 square feet. New rent amount is \$103.00 monthly; \$1,236.00 annually. Rent adjustment is 3.00%. Zen Sportz, Inc., has been a customer since February 2015.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

Zen Sportz, Inc., new rent amount is \$103.00 monthly; \$1,236.00 annually. Rent adjustment is 3.00%. Term: April 1, 2016 through March 31, 2017.

LEGAL REVIEW:

The City Attorney has reviewed the requested actions.

BOARD AND COMMITTEE ACTION:

The Legal Committee recommended the City Council authorize approval at their March 10, 2016 meeting.

STAFF RECOMMENDATION:

Airport Staff recommends the approval of lease agreements and lease amendments as proposed.

Attachments

RIAC Lease - Zen Sportz

LEASE AGREEMENT

THIS LEASE executed in Roswell, New Mexico on this 10th day of March, 2016 by and between the CITY OF ROSWELL, NEW MEXICO, a municipal corporation, hereinafter "Landlord", and ZEN SPORTZ, INC., a New Mexico corporation, hereinafter "Tenant".

WHEREAS Landlord has agreed to lease to Tenant the real property described below, together with the improvements thereon, in Chaves County New Mexico, and Tenant has agreed to lease said real property and improvements from Landlord;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. GRANTING CLAUSE AND PREMISES. For the term, at the rent and otherwise upon the terms, provisions and conditions contained herein, Landlord hereby lets and leases unto Tenant the surface only to the following real property, together with all improvements located thereon:

Office space in Building No. 1, the Terminal, consisting of 100 square feet, more or less, located at the Roswell International Air Center, identified on a plat attached hereto and made a part hereof, identified and listed as Exhibit "A" (Premises).

2. TERM. The Lease term is for one (1) year commencing on April 1, 2016 and ending March 31, 2017 unless sooner terminated by provision hereof.

3. RENT. Tenant agrees to pay to Landlord as rent the sum of One Thousand, Two Hundred Thirty Six Dollars and No Cents (\$1,236.00), payable in 12 monthly installments of \$103.00. Rent and other fees are due on the first day of each month. If Tenant fails to pay all rent and other fees due for any month by the tenth calendar day of the month that said rent and fees are due, Tenant shall pay to Landlord an additional 2% finance charge, as a penalty, each month until the full amount of that month's rent is paid. This penalty shall be immediately payable without limiting Landlord in the exercise of any other right or remedy to which it may be entitled by reason of Tenant's failure to pay rent when due. All rent shall be paid to Landlord without abatement, reduction or set off of any kind except as herein specifically provided.

4. SECURITY DEPOSIT. Tenant shall pay \$100.00 in advance as security for Tenant's full and faithful performance of all terms of this lease. This amount shall be used by Landlord at the termination of this Lease Agreement toward a. payment for rent or penalties due Landlord, b. reimbursement of the costs of cleaning and repairing damages (beyond normal wear and tear) to the Premises and c. the cost of removal of any hazardous material not properly disposed of by Tenant. Landlord shall be the sole and reasonable judge of all cleaning and repairs required for the Premises and the amounts needed for these purposes. Upon termination or expiration of this Lease the security deposit shall first be applied to necessary cleaning and removal, repairs and the remaining balance, if any, may then be applied to rentals and penalties then owing to Landlord. Any refund of the security deposit due Tenant will be delivered or mailed in accordance with Paragraph 26 of this Agreement within 60 days after the termination of this Lease Agreement.

5. **CONDITION OF PREMISES.** Tenant has inspected Premises and accepts the Premises in its present condition "as is". Tenant agrees that the Premises is in good repair and condition. Tenant agrees that, at the expiration of the term hereof, it shall yield up and deliver the Premises to Landlord in as good repair and condition, broom clean, as when received, except for loss resulting from ordinary use and wear.

6. **MAINTENANCE.** Tenant shall maintain the Premises in a safe and clean condition, in good order and repair. Tenant further agrees, at its sole cost and expense, to maintain the Premises, including improvements, in a clean and policed condition at all times.

7. **TAXES, LICENSES AND UTILITIES.** During the term hereof, Tenant shall pay all taxes, licenses, charges, fees or assessments levied or to be levied upon personal-property, fixtures or equipment placed by Tenant upon said Premises, of whatsoever kind or nature, incident to or arising out of the conduct of Tenant's business. Failure to have an appropriate current license or permit shall be a breach of this Lease. Tenant shall pay all utilities used on the Premises, including but not limited to telephone, electricity, gas, and water.

8. **PERSONAL PROPERTY AND FIXTURES OF TENANT.** All personal property and fixtures of Tenant in the Premises shall be kept at the sole risk of Tenant, and Landlord shall not be liable for any damage thereto or to Premises or to Tenant for interruption of business or otherwise. Tenant hereby waives all causes or rights of recovery against Landlord, its agents, employees, invitees and tenants for any loss to such personal property and fixtures on the Premises or to consequential loss arising therefrom caused by fire or other casualty, whether negligently caused or not.

9. **EQUIPMENT AND IMPROVEMENTS.**

a. Except as otherwise provided herein, Tenant shall have the right to install such equipment as may be necessary for the conduct of its business on the Premises; and at the expiration or termination of the Lease Tenant shall have the right to remove all of such equipment installed by Tenant that is removable without damage to the Premises. Also Tenant shall, upon written demand by Landlord, at Tenant's sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by Tenant pursuant to this Paragraph 9.

b. Tenant shall not make, suffer or permit to be made, any major additions, alterations or improvements on the Premises (including but not limited to, installing carpeting, air conditioning, painting, or attaching anything to the walls other than by plug-in) without first obtaining the written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. In the event that the consent is given and Tenant makes any major alterations, additions or improvements, such work shall be done in such a manner that no mechanic's lien, materialman's lien or other lien of any kind shall be created against or imposed upon the Premises or any part thereof, and Tenant shall indemnify and save harmless Landlord from any and all liability and claims for damage of any kind and nature which may be made or accrue against Landlord on account of any such major alterations, additions or improvements. At the expiration or termination of this Lease such improvements shall become the property of Landlord and the value thereof will not be offset against any amounts claimed by Landlord as owing under the terms of this Lease. Tenant agrees to bear all costs and expenses incident to the occupancy and maintenance of the structure and improvements placed therein including snow clearance.

10. INSURANCE.

a. Landlord will provide fire and extended coverage to the Premises during the term of the Lease. Tenant understands that fire and extended coverage does not cover the property of Tenant or any property on the premises that does not belong to Landlord.

b. Tenant shall maintain in full force and effect a policy or policies of general public liability insurance in which Landlord is named an additional insured to the extent of the liabilities assumed by Tenant hereunder, covering both parties against claims for injury, death or damage to persons or property occurring upon, in or about the Premises, in such limits as set forth in the New Mexico Tort Claims Act or as may be amended. Tenant shall provide Landlord written evidence of this insurance within thirty (30) days of the effective date of the Lease.

c. Landlord agrees to waive any rights of subrogation that it may have against Tenant in the event any insurance proceeds are paid to Landlord based upon any act or failure to act by Tenant. Tenant agrees to waive any rights of subrogation that it may have against Landlord in the event any insurance proceeds are paid to Tenant based upon any act or failure to act by Landlord.

11. DAMAGE OR DESTRUCTION OF PREMISES.

a. In the event the Premises are damaged by fire or other perils or casualty covered by fire and extended coverage insurance, Landlord may, in its sole and absolute discretion, repair or rebuild the same within a reasonable time after the event causing such damage. This Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate reduction of the rent from the date of damage and while such repairs are being made, such proportionate reduction to be based upon the extent to which the damage and making of such repairs shall reasonably interfere with the business carried on by Tenant in the Premises as determined by Landlord. If the damage is due to the fault or neglect of Tenant or its employees, as determined by Landlord in its sole discretion, there shall be no reduction of rent. Landlord may authorize or direct construction of an alternative structure or may elect to retain any insurance proceeds received by it if Landlord deems reconstruction or construction of an alternative structure to be impractical or unreasonable in its sole discretion.

b. In the event the Premises are damaged to any extent as a result of any cause other than the perils covered by fire and extended coverage insurance, Landlord shall in its sole discretion have the option to: (1.) to repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage, in which case this Lease shall continue in full force and effect, but the rent shall be proportionately reduced as provided above in 11a. during the period of such repair, reconstruction or restoration, or (2.) to give notice to Tenant at any time within sixty (60) days after such damage occurs, terminating this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of giving to Tenant such notice of termination, this Lease shall terminate and all interests of Tenant in the Premises shall cease on the date so specified in such notice and Tenant shall pay the rent, as proportionately reduced, based upon the extent, if any, to which such damage interfered with the business carried on by Tenant in the Premises, up to the date of such termination.

c. With regard to Landlord's duty or option to repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage as provided in 11a. and b. above, Landlord shall act promptly and with due diligence, but Landlord shall not be responsible for delays caused by factors beyond Landlord's control, including but not limited to delays because of strikes, work slowdowns or stoppages,

accidents, acts of God, failure of any governmental or other authority to act in a timely manner, or delays caused by contractors. If such delays occur, Tenant agrees that Landlord shall not be responsible for damages, nor shall Landlord be deemed to be in default under this Lease.

d. Landlord shall not be required to repair any damage by fire or other casualty, or to make any repair or replacements of any leasehold improvements, fixtures, or personal property of Tenant.

12. **LIABILITY.** Landlord shall not be liable to Tenant or to Tenant's employees, customers, visitors or any other person or entity for any death or injury or damage to person or property arising from any cause whatsoever which shall occur in any manner in or about the Premises in connection with, or arising out of Tenant's operations and use of the Premises. Tenant agrees to indemnify and save harmless Landlord from any claim for death, injury, damage or loss which may occur in any manner in or about the Premises, unless such death, injury, damage or loss is proximately and solely caused by negligent act or omission to act of Landlord's Agents.

13. **CONDEMNATION OR GOVERNMENTAL TAKING.** In the event that the Premises or any portion thereof shall be condemned for public or quasi-public purpose, or shall be taken by any governmental authority in any manner whatsoever during the term hereof, the parties hereto agree to the following:

a. In the event that the Leased Premises shall be totally condemned or taken, or condemned or taken so as to render the remainder thereof unusable for purposes for which said Premises was leased, this Lease shall terminate as of the effective date of such condemnation or taking.

b. In the event that a portion of the leased Premises is condemned or taken, but such condemnation or taking does not render the remainder thereof unusable for the purposes for which the Premises was leased, Tenant's obligation under this Lease shall continue in full force and effect, but the amount of rent payable by Tenant shall be reduced in the proportion which the portion of the leased Premises condemned or taken bears to the total area of the leased Premises. In such event, Tenant shall bear any necessary costs of relocating its equipment and placing the remaining Premises in proper and usable condition.

c. In the event of total or partial condemnation or taking of the leased Premises as aforesaid, all compensation awarded or paid upon a total or partial taking of the Premises shall belong to Landlord and Tenant shall have no right or cause of action against Landlord; provided, however that Tenant shall be entitled to participate in any award to the extent that such award includes the loss, if any, sustained by Tenant as a result of the termination of this Lease or diminution of its leasehold estate and the value of any fixtures condemned or taken if such fixtures were installed by Tenant and are located upon the Premises at the time of such condemnation or taking. Tenant reserves the right to proceed independently of Landlord with any claim for compensation for damages to which Tenant may become entitled by reason of such total or partial condemnation or taking.

14. **CONDITIONS OF DEFAULT.** If at any time during the term of this Lease, Tenant shall:

a. Default in the payment of any installment of rent or any other sums specifically to be paid by Tenant hereunder and such default shall not have been cured within ten (10) days after Landlord shall have given to Tenant written notice specifying such default; or

b. Default in the observance of any of the Tenants's covenants, agreements or obligations hereunder, other than the covenants to pay rent or any other sum herein specified to be paid by Tenant, and such default shall not have been cured within thirty (30) days after Landlord shall have given to Tenant written notice specifying such default; provided, however, that if the default complained of shall be of such nature that he same cannot be completely remedied or cured within such thirty (30) day period, then such default shall not be an enforceable default against Tenant for the purposes of this paragraph if Tenant shall have commenced curing such default within such thirty (30) day period and shall proceed with reasonable diligence and in good faith to remedy the default complained of; or

c. Finally and without further possibility of appeal or review (1.) be adjudicated bankrupt or insolvent, (2.) have a receiver or trustee appointed for all or substantially all of its business or assets, or (3.) suffer an order to be entered approving a petition filed against Tenant seeking reorganization of Tenant under the Federal Bankruptcy laws or any other applicable law or statute of the United States or any state thereof; or

d. Make an assignment for the benefit of its creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or arrangement under the Federal Bankruptcy law or other applicable law or statute of the United States or any state thereof, or shall file a petition to take advantage of any insolvency act or shall assent to the appointment of a receiver or trustee of all or a substantial part of its business and property; or

e. Leave the Premises vacant or deserted for a period of sixty (60) consecutive days; or

f. Use the Premises for purposes other than those set forth in Paragraph 18 hereof, or fail to use the Premises for any purpose for a period of sixty (60) consecutive days and such lack of use shall continue for thirty (30) days after Landlord has given Tenant written notice specifying the default.

15. REMEDIES OF LANDLORD FOR DEFAULT. If Tenant is in default of this Lease, then Landlord shall have the following remedies:

a. Landlord may sue to collect any and all sums which may accrue to Landlord by virtue of the provisions of this Lease and/or for any and all damage that may accrue by virtue of the breach of this Lease, Tenant hereby waiving all demands for rent;

b. Landlord may sue to restrain by injunction any violation or threatened violation of the covenants, conditions or provisions of this Lease;

c. Landlord may, without further notice to Tenant and without further demand for rent due or for the observance or performance of any of said terms, conditions or agreements, immediately re-enter the Leased Premises by force or otherwise, without being liable therefor, and remove all persons and property therefrom, using such force as may be necessary. If this Lease shall be terminated before its expiration by reason of Tenant's default, or if the Tenant shall abandon or vacate said Premises before the expiration of the term of this Lease, the same may be re-rented by Landlord (but Landlord shall not be obligated so to do) for such rent and upon such terms as Landlord may see fit and Tenant shall stand liable to Landlord for any deficiency. Any costs incurred in storing Tenant's property shall be considered additional damages recoverable by Landlord.

d. If Tenant shall at any time be in default in fulfilling any of the covenants of the Lease, Landlord may, but shall not be obligated so to do, and without notice to or demand upon Tenant, take or cause to be taken such action or make such payment as may be required by such covenant, at Tenant's risk and expense, and all expenses, costs and liabilities of Landlord incurred under this paragraph shall be deemed additional rent hereunder and shall be payable to Landlord on demand together with interest thereon at the rate of fifteen percent (15%) per annum.

e. The remedies of Landlord hereunder shall be cumulative and not exclusive of any other remedy hereunder or to which Landlord may be lawfully entitled. The failure of Landlord to insist upon strict performance of any of the covenants of this Lease or to exercise any option herein contained shall not be construed as a waiver or relinquishment for the future of such or any other covenant or option, nor shall the receipt by Landlord of rent with knowledge of any default by Tenant, or any other action of Landlord except a waiver expressed in writing signed by Landlord, be deemed a waiver of such default, nor shall the acceptance of any sum of rental less than the sum provided for in this Lease alter the rental terms hereof or absolve Tenant from its obligation to pay the full rental herein provided, but the acceptance of any lesser sum than the full rent herein stipulated shall be an acceptance of the amount paid on account of the full rent due.

16. LEGAL FEES. If any person not a party to this Lease shall institute an action against Tenant in which Landlord, involuntarily and without cause, shall be made a party defendant, Tenant shall indemnify and save Landlord harmless from all liabilities, loss damage and expense by reason thereof, including reasonable attorney's fees and all reasonable costs incurred by Landlord in such action. If any action shall be brought to recover any rental under this Lease, or for or on account of any other default/breach of or to enforce or interpret any of the terms, covenants or conditions of this Lease, or for the recovery of possession of the Premises, Landlord shall be entitled to recover from Tenant all reasonable attorney fees and costs.

17. BANKRUPTCY. If Tenant should be adjudged bankrupt, either voluntarily or involuntarily, Landlord shall have the option to pursue with the Court having jurisdiction all remedies to which Landlord may be entitled in law or equity. In no event shall Tenant's interests in this Lease be deemed to be an asset of Tenant.

18. USE OF THE PREMISES.

a. Tenant shall use the Leased Premises solely as a business office, together with such other related uses as shall be reasonably incidental thereto, and for no other purposes, and it shall not use the Leased Premises for any purpose prohibited by the laws of the United States and the State of New Mexico. Tenant shall be bound by the Roswell City Code or as may be amended from time to time and all applicable policies and procedures of the Roswell International Air Center ("RIAC").

b. Proper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description generated on or as a part of Tenant's occupancy of the Premises is the sole and absolute responsibility of Tenant. Tenant shall comply with all Federal, State and local regulations, laws and ordinances of the City of Roswell in disposal of any such materials. Improper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description, generated on or as a part of Tenant's occupancy of the Premises shall be grounds for the immediate Lease termination with or without process of law. Tenant represents to Landlord that it will not release any hazardous

materials at the leased premises or contaminate them. To the extent it is proven that hazardous materials have been released on the leased premises by Tenant, Tenant's employees or representatives during the term of Tenant's occupancy of the leased premises, Tenant hereby unconditionally agrees at its sole cost to defend, indemnify, protect and hold Landlord harmless from and against any bodily injury, death or property damage, including (1) environmental claims, (2) environmental expenses, including without limitation, the handling, investigation, treatment, storage decontamination, remediation, removal, transport or disposal of such hazardous materials, and (3) liabilities, losses, damages, fines, penalties, charges, orders, judgments, or liens caused by such release.

c. Tenant shall operate its business in such a manner as to prevent the performance of any act or creation or maintenance of any thing which, in the opinion of Landlord, is or may become a nuisance or otherwise noxious or objectionable condition including, but not limited to, any act or thing resulting in noise, vibration, shock, smoke, dust, odor or other forms of air pollution, or other condition, substance or element in such amount as to affect areas surrounding or adjoining the Premises. Landlord shall be the sole and reasonable judge as to whether or not any act done or thing created or maintained by Tenant on the Premises is or may become a nuisance or otherwise noxious or objectionable condition, and Tenant agrees to abide by Landlord's decision and act in accordance with its directions with respect thereto.

d. Landlord reserves the right to take any action it considers necessary to protect the aerial approaches to the RIAC's airport against obstruction, and together with the right to prevent Tenant from erecting or permitting to be erected any building or other structure on the Premises which, in the opinion of Landlord, would limit the usefulness of the airport or constitute a hazard to aircraft or conflict with a current restriction or master plan.

19. NONDISCRIMINATION PROVISIONS. Tenant shall use the Premises in compliance with all requirements imposed by or pursuant to Nondiscrimination in Federally Assisted Programs of the Department of Transportation 49 CFR 21. Landlord shall itself comply with these requirements in its leasing activities.

20. DOMINANT PROVISIONS. The parties acknowledge that the Leased Premises are a part of the RIAC and are therefore subject to the provisions of the Indenture between the United States of America and the City of Roswell, dated 24 January 1968, and filed for record in Book 248, Page 901, Office of the County Clerk, Chaves County, New Mexico and any other agreements or understandings. The provisions of the above described indenture are hereby incorporated herein by reference and accepted as binding by the parties hereto.

21. ACCESS TO/ INSPECTION OF PREMISES. Upon giving reasonable notice to Tenant, Landlord and the Federal Aviation Administration, their agents, or contractors may enter upon the Premises during Tenant's regular business hours and have free access to all buildings and other improvements located thereon for the purpose of inspecting the condition thereof or exercising any right or power reserved to Landlord or the Federal Aviation Administration under the terms and provisions of this Lease.

22. ASSIGNMENT AND SUBLEASE. Tenant shall not assign this Lease, in whole or in part, nor sublet all or any part of the Premises.

23. **HOLDOVER.** In the event Tenant remains in possession of Premises after the expiration or termination of this Lease, Tenant shall be deemed a tenant from month to month only, at the rental provided for in this Lease plus an additional 5% and Tenant's occupancy shall be governed in all other provisions hereof, except as to the duration of the term, by the provisions of this Lease.

24. **INTERPRETATION OF LEASE AGREEMENT.** Nothing in this Lease Agreement shall be construed or interpreted as limiting, relinquishing or waiving of any rights of ownership enjoyed by Landlord in the Premises; or waiving or limiting Landlord's authority or control over the management, operation or maintenance of property, except as specifically provided for in this Lease Agreement; or impairing governmental rights and police powers of Landlord.

25. **PARAGRAPH HEADINGS.** The paragraph headings contained herein are for convenience and in reference and are not intended to define or limit the scope of any provision of this Lease.

26. **NOTICES.**

a. All notices, requests or other communications to Landlord shall be given by regular and certified mail addressed to the following:

Air Center Manager
1 Jerry Smith Circle
Roswell, NM 88203

b. All notices, requests or other communications to Tenant shall be given by regular and certified mail addressed to the following:

Zen Sportz
1 Jerry Smith Circle
Roswell, NM 88203

27. **EFFECT.** The terms and provisions hereof shall extend to and be binding upon the successors and assigns of the parties hereto.

28. **WAIVERS.** One or more waivers of any covenant, term or condition of this Lease shall not be construed as a waiver of a subsequent default or breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

29. **GOVERNING LAW; VENUE.** This Lease and the rights and obligations of the parties hereunder shall be governed by New Mexico law. Any suit brought by either party regarding this agreement or default or breach thereof shall be filed in the courts of Chaves County New Mexico.

30. **TERMINATION.** This Lease may be terminated by either party by giving thirty (30) days written notice.

31. ENTIRE AGREEMENT AND AMENDMENT. This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, with all negotiations, considerations, and representations between the parties having been incorporated herein. No course of prior dealings between the parties shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Lease Agreement other than those specifically set forth herein. This Lease Agreement is the entire Agreement and may be amended only in writing signed by Tenant and approved by Landlord's Governing Body.

IN WITNESS WHEREOF, this Lease Agreement is executed this _____ day of March, 2016.

CITY SEAL

LANDLORD:
CITY OF ROSWELL, NEW MEXICO

Dennis J. Kintigh, Mayor

ATTEST:

Sharon Coll, City Clerk

TENANT:
ZEN SPORTZ, INC.

Mike Clarke, President

EXHIBIT "A"

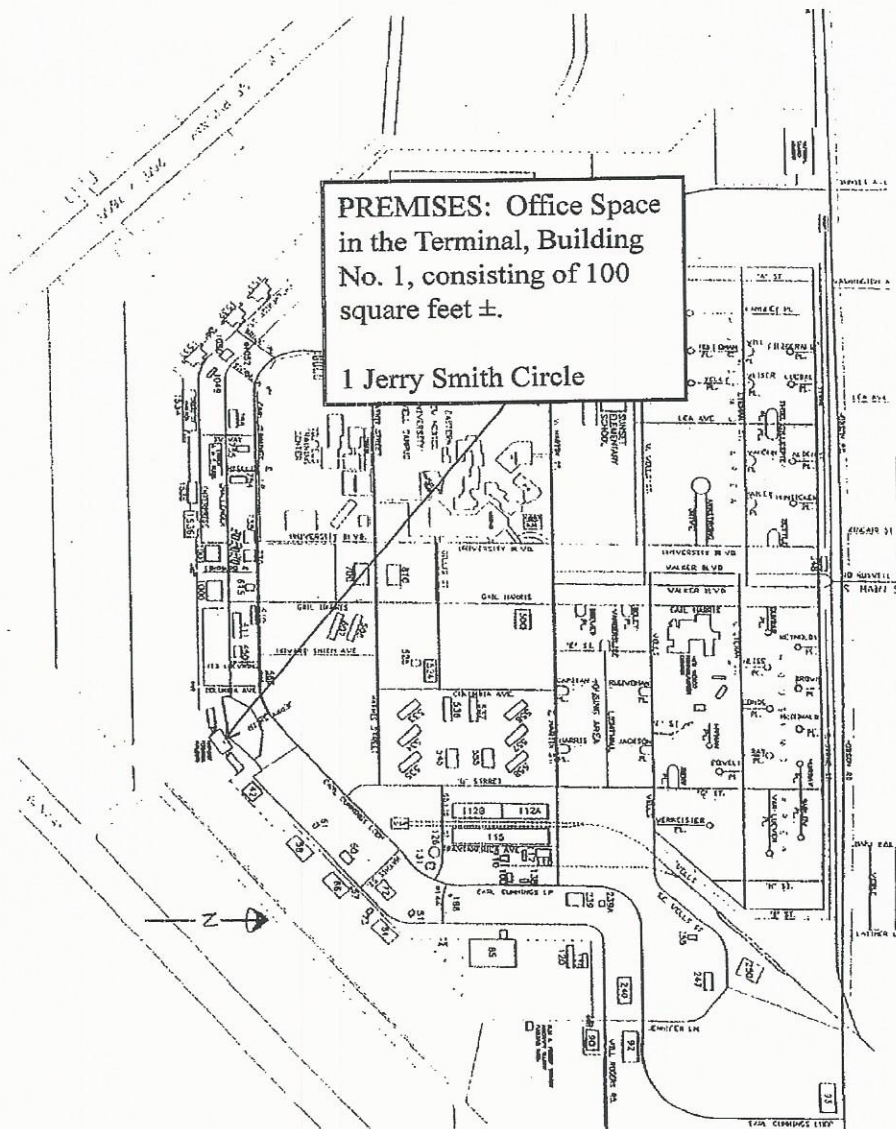


EXHIBIT "A"

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 8.

Meeting Date: 03/10/2016

COMMITTEE: Legal

CONTACT: William Zarr

CHAIR: Jason Perry

ACTION REQUESTED:

Request for Birdman Air Enterprise, Inc., a New Mexico Corporation, to amend their current lease agreement to add an additional 6,250 square feet to their leasehold in Building No. 1770.

BACKGROUND:

Birdman Air Enterprise, Inc., leases the building for the purpose of an office and storage of tools and parts. They are requesting an additional 6,250 square feet. Rent is increased by \$325.00 per month; total new rent amount is \$1,297.73 per month.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

Birdman Air Enterprise, Inc., rent is increased by \$325.00 per month; total new rent amount is \$1,297.73 per month.

LEGAL REVIEW:

The City Attorney has reviewed the requested actions.

BOARD AND COMMITTEE ACTION:

The Legal Committee recommended the City Council authorize approval at their March 10, 2016 meeting.

STAFF RECOMMENDATION:

Airport Staff recommends the approval of lease agreements and lease amendments as proposed.

Attachments

RIAC Lease - Birdman Air Enterprise, Inc.

SIXTH ADDENDUM
TO LEASE AGREEMENT

THE CITY OF ROSWELL, NEW MEXICO, a municipal corporation, hereinafter "Landlord" and BIRDMAN AIR ENTERPRISES, hereinafter "Tenant" hereby agree to the following amendment to that certain Lease Agreement dated July 12, 2012.

Effective with Council approval March 10, 2016:

Tenant's leasehold is increased by 6250 square feet in Building No. 1770. Rent is increased by \$325.00 per month; total new rent amount is \$1,297.73 per month effective for the March 2016 billing cycle.

Except as amended herein, the original Lease and Addenda shall continue without change, and in full force and effect as originally executed.

IN WITNESS WHEREOF, this SIXTH Addendum to Lease Agreement is done and executed in Roswell, New Mexico this _____ day of March, 2016.

CITY SEAL

LANDLORD:
CITY OF ROSWELL, NEW MEXICO

Dennis J. Kintigh, Mayor

Sharon Coll
City Clerk

TENANT:
BIRDMAN AIR ENTERPRISES, INC.

Isaac Sheets, President/CEO

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 9.

Meeting Date: 03/10/2016

COMMITTEE: N/A

CONTACT: Mike Mathews

CHAIR: N/A

ACTION REQUESTED:

Resolution 16-17 Weeds - The Resolution shall mandate the cleanup of approximately four (4) separate properties within the City.

BACKGROUND:

At present, no more efficient means is available to enforce the requirements that property within the City limits be kept clean and orderly. Citation of property owners requires they be present in Roswell. Even the citations do not provide for the actual clean up and cannot give the City the right to file a lien for the cleanup expense. This procedure is cumbersome, but should result in resolution of some more severe situations.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

Adoption of the resolution will probably cause a number of people to voluntarily clean up their property. Most of the balance will be cleaned up by the City and liens will be filed and later foreclosed. A few people may appeal the resolution to Council and a hearing will have to be provided to hear their appeals. Overall, the resolution should affect rapid cleanup of this season's weeds and other debris, followed by an extended collection period.

LEGAL REVIEW:

The City Attorney has reviewed the current ordinance.

BOARD AND COMMITTEE ACTION:

Not applicable.

STAFF RECOMMENDATION:

Code Enforcement recommends approval of Resolution 16-17.

Attachments

Resolution 16-17 Weeds
Weeds attachment list

CITY OF ROSWELL
RESOLUTION NO. 16-17

A RESOLUTION REQUIRING THE REMOVAL OF CERTAIN RUBBISH, WEEDS, WRECKAGE OR DEBRIS; PROVIDING THAT THE CITY SHALL HAVE A LIEN FOR THE COST OF REMOVAL AND DECLARING CERTAIN PROPERTY TO BE SO COVERED WITH RUBBISH, WEEDS, WRECKAGE OR DEBRIS AS TO CONSTITUTE A PUBLIC NUISANCE PREJUDICIAL TO HEALTH, SAFETY AND GENERAL WELFARE.

WHEREAS, the City Council of the City of Roswell, New Mexico, finds that the premises listed in Exhibit A attached hereto and purportedly owned of record, or occupied by the parties named, have accumulated rubbish, weeds, wreckage or debris so as to be a menace to the public health, safety and general welfare of the inhabitants of the community; and further, that it is in the public interest to require the removal thereof, according to law;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL, THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO, that:

1. The premises set forth in Exhibit A are declared to be so covered with rubbish, weeds, wreckage or debris as to constitute a menace to the public comfort, health, safety and general welfare within the purview of Article 3-18-5 NMSA 1978.

2. The owners, occupants or agents in charge of said premises are hereby ordered to remove such accumulated rubbish, weeds, wreckage or debris within ten (10) days of the receipt of notice by certified mail or from the date of publication of this resolution. In the event such removal is not commenced or written objection filed with the City Clerk within ten (10) days after service of a copy of this resolution, then the City Manager is authorized and directed to cause such accumulated rubbish, weeds, wreckage or debris to be removed at the sole cost and expense of the owner, or other parties having an interest in the properties, and further, that the reasonable cost of such removal shall be and become a subsisting and valid lien against such property so removed and the lot or parcel of land from which such removal was made and shall be foreclosed in the manner provided by law for the foreclosure of municipal liens.

3. In the event the owner or other person aggrieved shall file a protest within the time provided, the City Council shall thereafter fix a date for hearing. At the hearing, the protestant shall be entitled to be heard in person, by agent or attorney and the City Council shall consider evidence whether or not its previous action shall be enforced or rescinded; if it shall be determined that the removal order should be enforced.

4. Persons aggrieved by the determination of the City Council have a right to appeal to a court of competent jurisdiction by giving notice of such appeal to the City Council within five (5) days after the day of issuance of such order or decision, together with a petition for court review duly filed with the Clerk of the Court within twenty (20) days of the date of issuance of the order or decision complained of.

ADOPTED, SIGNED AND APPROVED 10th day of March 2016.

CITY SEAL

Dennis J. Kintigh, Mayor

ATTEST:

Sharon Coll, City Clerk

316 S. SEQUOIA AVE. OAK KNOLL Block 3 Lot 9 GARCIA, RODOLFO; GARCIA, ROCIO 6412 EDGEMERE BLVD., APT. L 5 EL PASO, TX 79925-3575	1507 PONTIAC DR. SCHNEDARS Block 3 Lot 14 GROWING INVESTMENT PROPERTIES, LLC 13170 CENTRAL AVE. SE #B119 ALBUQUERQUE, NM 87123
APPROX. 505 E. REED SHERMAN-REED REDIV Lot 6 COUNSELING ASSOCIATES INC. 110 E. MESCALERO RD. ROSWELL, NM 88201	1726 N. OHIO AVE. CRESCENT HEIGHTS Block 6 Lot 10 SCHWALBE, TOM J.; SCHWALBE, PAM C. 1726 N. OHIO ROSWELL, NM 88201

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 10.

Meeting Date: 03/10/2016

COMMITTEE: N/A

CONTACT: Mike Mathews

CHAIR: N/A

ACTION REQUESTED:

Resolution 16-18 Condemnations - The Resolution shall require the removal or demolition of eight (8) dilapidated structures.

BACKGROUND:

These structures constitute a public nuisance harmful to the public health, safety and general welfare.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

Resolution and notice will be served to owners requiring action within fifteen (15) days. Demolition by the City will proceed if no action is taken and a lien will be placed on the property for cost of removal.

LEGAL REVIEW:

The City Attorney has reviewed the current ordinance.

BOARD AND COMMITTEE ACTION:

Not applicable.

STAFF RECOMMENDATION:

Code Enforcement recommends approval of Resolution No. 16-18.

Attachments

Condemnations Resolution

Condemnations Attachment

CITY OF ROSWELL
RESOLUTION NO.16-18

A RESOLUTION REQUIRING THE REMOVAL AND/OR DEMOLITION OF CERTAIN DAMAGED AND DILAPIDATED BUILDINGS, STRUCTURES OR PREMISES; PROVIDING THAT THE CITY SHALL HAVE A LIEN FOR THE COST OF REMOVAL; PRESCRIBING THE PROCEDURE INCIDENT TO SUCH REMOVAL AND/OR DEMOLITION AND DECLARING CERTAIN PROPERTY TO BE IN SUCH STATE OF DISREPAIR, DAMAGE AND DILAPIDATION AS TO CONSTITUTE A DANGEROUS BUILDING AND A PUBLIC NUISANCE PREJUDICIAL TO THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE.

WHEREAS, it is the opinion of the City Council of the City of Roswell, New Mexico, that those certain buildings or structures upon the premises located as follows and purportedly owned of record, or occupied by the parties hereinafter named, are and have become in such state of disrepair, damage and dilapidation as to be a menace to the public health, safety and general welfare of the inhabitants of the community; and further, that it is in the public interest to require the removal thereof, according to law, by reason of the condition or conditions set forth in Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL, THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO:

1. That the buildings or structures set forth in Exhibit "A" are declared to be in such state of disrepair, damage and dilapidation as to constitute a dangerous building within the purview of Roswell Municipal code section 16-12, as well as being a public nuisance prejudicial to the public health, safety and general welfare. That such dangerous buildings or structures set forth, if any, cannot reasonably be repaired so that they will no longer exist in violation of the terms of the ordinance.

2. The owners, occupants, if any, or agent in charge of said premises be, and they hereby are ordered and required to remove such dangerous buildings, or structures within a reasonable time thereafter not to exceed fifteen (15) days from the receipt of notice by certified mail or from date of publication of this resolution as hereinafter provided, and as the case may be. In the event such removal be not commenced by such owner, occupant or agent, or written objection thereto be filed with the City Clerk within ten (10) days after service of a copy of this resolution by certified mail or by publication, requesting a hearing, then and in such event, the City Manager is hereby authorized and directed to cause such dangerous buildings or structures to be removed at the sole cost and expense of the owner, owners or other parties having an interest in said properties, and further, that the reasonable cost of such removal shall be and become a subsisting and valid lien against such property so removed and the lot or parcel or land from which such removal was made and shall be foreclosed in the manner provided by law for the foreclosure of municipal liens. Alternatively, the City Manager may act pursuant to Article 3-18-5 (G) (NMSA, 1978), and cause the dangerous buildings or structures to be removed and give title to them or their components to the removing

person or persons.

3. In the event the owner or other interested party aggrieved shall file his protest within the time herein provided, requesting a hearing, on the matter, the City Council shall fix a date for hearing, at which time said Protestants shall be entitled to be heard in person, by agent or attorney, and the City Council shall consider evidence whether or not its previous action should be enforced or rescinded. If it shall be determined that the removal order should be enforced, and the owner(s) shall fail or neglect to comply with said decision of the City Council, they shall have a right of appeal to a court of competent jurisdiction by giving notice of such appeal to the City Council within the (10) days after the date of the City Council decision, together with his petition for court review duly filed with the Clerk of the Court within thirty (30) days of the date of the decision complained of.

4. Upon the adoption of this resolution, it shall be the duty of the City Building Inspector to notify the owner, occupant or agent in charge of such building or structure of the adoption of this resolution by serving a copy thereof upon him by certified mail, return receipt requested; and in the event such owner, occupant or agent cannot be found or served within said City as herein above provided, such notice may be served by posting a copy of said resolution upon the premises complained of, followed by legal publication of said resolution one time in a newspaper of general circulation within the city.

ADOPTED, SIGNED AND APPROVED 10th day of March 2016.

CITY SEAL

Dennis J. Kintigh, Mayor

ATTEST:

Sharon Coll, City Clerk

Location	Condition	Name
1512 S. LEA AVE. SOUTH HIGHLANDS EXT. B Block 3 Lot 7	Dilapidated/ Deterioration Open To Public, Inadequate Maintenance	JOHNSON, HOUSTON RAY JR. & JOHNSON, LAVERNE 1512 S. LEA AVE. ROSWELL, NM 88203
703 E. MATHEWS ST. MBL HOME TITLE LIC.# 29694MHB SERIAL: 1076-470- S28630 YEAR: 1977 MAKE: MELODY TIMCO SIZE: 14 X 70	Dilapidated/ Deterioration Open To Public, Inadequate Maintenance	GALINDO, GRACIELA NOHEMI 1420 S. ELM ST. ROSWELL, NM 88203
703 E. MATHEWS ST. BARNETTS Block 10 Lot 12	Dilapidated/ Deterioration Open To Public, Inadequate Maintenance	GALINDO-GOMEZ, GRACIELA N. 1420 S. ELM AVE. ROSWELL, NM 88203
1113 CAHOON AVE. 1113 CAHOON AVE. ½ S 4 T 11S R 24E S2 SE4 SE 4 N 140' S 410' W 100'	Dilapidated/ Deterioration Open To Public, Inadequate Maintenance	SANCHEZ, SIMON L. 1113 CAHOON AVE. ROSWELL, NM 88203-6828
2310 N. GRAND AVE. #A HOWARD LEWIS REPLAT Lot C	Dilapidated/ Deterioration Open To Public, Inadequate Maintenance	LAWSON, MICHAEL F. 3200 W. COLLEGE BLVD. ROSWELL, NM 88201
2310 N. GRAND AVE. #B HOWARD LEWIS REPLAT Lot N	Dilapidated/ Deterioration Open To Public, Inadequate Maintenance	LAWSON, MICHAEL F. 3200 W. COLLEGE BLVD. ROSWELL, NM 88201
2312 N. GRAND AVE. #A HOWARD LEWIS REPLAT Lot M	Dilapidated/ Deterioration Open To Public, Inadequate Maintenance	LAWSON, MICHAEL F. 3200 W. COLLEGE BLVD. ROSWELL, NM 88201
2312 N. GRAND AVE. #B HOWARD LEWIS REPLAT Lot D	Dilapidated/ Deterioration Open To Public, Inadequate Maintenance	LAWSON, MICHAEL F. 3200 W. COLLEGE BLVD. ROSWELL, NM 88201

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 11.

Meeting Date: 03/10/2016

COMMITTEE: Finance

CONTACT: Monica Garcia

CHAIR: Caleb Grant

ACTION REQUESTED:

Request approval of funding for the 6th Annual Xcel Energy Tour de Ocho Millas in the amount of \$2,000.

BACKGROUND:

The 6th Annual Xcel Energy Tour de Ocho Millas has been funded since 2012. The 6th Annual Xcel Energy Tour de Ocho Millas is scheduled for September 10, 2016. This event is a cycling race around the historic eight mile loop around Bottomless Lakes State Park. This race attracts serious cycling racers and first time cyclist including teenagers and children. The location of the event is Bottomless Lakes State Park.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

The applicant requested funding in the amount of \$2,825.

- Visitor Promotion
- 6th Annual Xcel Energy Tour de Ocho Millas - budgeted

LEGAL REVIEW:

Not applicable.

BOARD AND COMMITTEE ACTION:

The Occupancy Tax Board recommend funding for this event at their meeting on February 23, 2016. The Finance Committee recommend funding for this event in the amount of up to \$2,000 on a reimbursement basis at their meeting on March 3, 2016.

STAFF RECOMMENDATION:

City Council consideration of funding for the 6th Annual Xcel Energy Tour de Ocho Millas in the amount of \$2,000.

Attachments

6th Annual Xcel Energy Tour de Ocho Millas



CITY OF ROSWELL –SPECIAL EVENT LODGERS' TAX FUNDS – APPLICATION

NAME OF EVENT:

6th Annual Xcel Energy's Tour de Ocho Millas

DATE(S) OF EVENT: Saturday, September 10, 2016

(application required 90 days prior to event)

NAME OF ORGANIZATION APPLYING FOR FUNDING:

Reflections & Recovery

DESCRIBE EVENT: The 6th Annual Xcel Energy's Tour de Ocho Millas is a cycling race around the historic eight mile loop around Bottomless Lakes State Park. The race attracts cycling racers on a cycling circuit and are serious racers who have included this race cycle up to 64 miles. The race also attracts first time cyclist, including teenagers and children. Plans are in the works to include a day before the race run ride for families.

LOCATION OF EVENT: Bottomless Lakes State Park

HOW WILL YOU ADVERTISE AND MARKET THE EVENT? Flyers, T-shirts, Websites, Cycling networks & Bike Shops

HOW WILL ATTENDANCE AND ORIGIN BE MEASURED? Online registration and Lodgers Tax Event Survey

ESTIMATED TOTAL # OF ATTENDEES: 250-300

EST. # ATTENDEES FROM OUTSIDE CHAVES CO.: 100

HAVE YOU DISCUSSED SPECIAL ROOM PACKAGES DURING YOUR EVENT WITH A ROSWELL LODGING FACILITY? Yes

Last year Fairfield Marriott provided discount hotel rates and will also work with us this year.

WHAT PERCENTAGE OF YOUR MARKETING BUDGET WILL BE USED OUTSIDE OF ROSWELL? 70 %

WILL YOU HAVE A WEBSITE FOR YOUR EVENT? Yes

EVENT WEBSITE (if applicable): www.TourdeOchoMillas.com

LIST FULL AMOUNT OF MARKETING/ADVERTISING and OTHER ELIGIBLE EXPENSES ON PAGE 2.

REMEMBER: FUNDING IS PROCESSED ON A REIMBURSEMENT BASIS AT 50% OF ELIGIBLE EXPENSES UP TO THE AMOUNT APPROVED (a one-to-one match)

A REQUEST OF \$25,000 and up may require a signed contract with the City of Roswell.

PAID receipts for eligible expenses must be turned in for reimbursement.

Requested Funding must equal 50% or less of the Total Eligible Expenses listing on Page 2

AMOUNT REQUESTED \$ 2825.00

IF YOU ARE REQUESTING SPONSORSHIP, PERSONNEL OR EQUIPMENT FROM ANY CITY DEPARTMENT - COMPLETE ON PAGE 2.

RULES AND REGULATIONS

I UNDERSTAND THAT THESE ARE PUBLIC FUNDS AND THEY ARE TO BE ADMINISTERED ACCORDING TO STATE LAW AND CITY ORDINANCES, AND I AGREE TO SUBMIT A FOLLOW UP REPORT WITH A FINANCIAL STATEMENT WITHIN NINETY (90) DAYS FOLLOWING THE EVENT OR I MAY FORFEIT THE FUNDS AS WELL AS ELIGIBILITY FOR FUTURE FUNDING. I AGREE TO USE THE CITY LOGO AND/OR "PAID IN PART BY THE CITY OF ROSWELL LODGERS' TAX" ON ALL ADVERTISING, VERBAL OR WRITTEN. I UNDERSTAND THAT THIS APPLICATION CONSTITUTES A CONTRACT BETWEEN THE CITY OF ROSWELL AND THE ORGANIZATION TO RECEIVE THE FUNDS, SHOULD THE FUNDS BE APPROVED BY THE OCCUPANCY TAX ADVISORY BOARD AND THE CITY OF ROSWELL GOVERNING BODY. I UNDERSTAND FUNDING MAY BE DENIED OR THAT APPROVED FUNDING AMOUNTS MAY DIFFER FROM THE AMOUNT REQUESTED ON THE APPLICATION. I ALSO UNDERSTAND THAT THE DISBURSEMENT OF FUNDS IS ON A DRAWDOWN REIMBURSEMENT BASIS (matched by Lodgers' Tax at 50% up to the funded amount, a one-to-one match).

NAME (PRINT) OF APPLICANT MAKING REQUEST: Barbara Gomez

SIGNATURE OF APPLICANT: *B. Gomez*

(SEND CHECK TO) ADDRESS / CITY / STATE / ZIP:

P.O. Box 721, Roswell, NM 88202

PHONE:

CELL: 575-626-8033

E-MAIL: info@tourdeochomillas.com

DATE SUBMITTED: JAN 14 2016

90 DAYS Y / N

TO BE PRESENTED AT MEETING ON: 2-23-16

➤ ATTACH TOTAL PROPOSED BUDGET FOR EVENT ALONG WITH A DETAILED ADVERTISING/MARKETING BUDGET.

➤ PLEASE FEEL FREE TO ADD ADDITIONAL PAGES, SAMPLES OF ADS OR BROCHURE ARTWORK.

➤ PLEASE PROVIDE ORIGINAL APPLICATION PLUS (+) 5 COPIES OF APPLICATION, ADDITIONAL PAGES AND /OR SAMPLES

➤ MAIL OR DELIVER TO CITY OF ROSWELL, c/o Lodger Tax Grant Request, 425 N RICHARDSON, (P O BOX 1838), ROSWELL, NM 88202-1838

* SEE MEETING SCHEDULE FOR APPLICATION DUE DATES. (These are "Received by" dates, not postmarked dates.) Revised Jan 7, 2016

NAME OF EVENT: 6th Annual Xcel Energy's Tour de Ocho Millas
DATE(S) OF EVENT: Saturday, September 10, 2016
NAME OF ORGANIZATION: Reflections & Recovery

PROPOSED ELIGIBLE EXPENSES:

ELIGIBLE EXPENSES:	LOCAL AMOUNT	OUT –OF-TOWN AMOUNT	TOTAL AMOUNT	Out-of-Town %
NEWSPAPER	225.00	625.00	850.00	73.5 %
MAGAZINE		350.00	350.00	100 %
RADIO	300.00	1,200.00	1,500.00	80 %
TELEVISION	0.00	0.00	0.00	—
INTERNET	200.00	800.00	1,000.00	80 %
PRINTING (brochures, posters, cards)	150.00	150.00	300.00	50 %
MAILING	20.00	30.00	50.00	60 %
T-SHIRTS (or other marketing items)	600.00	1,000.00	1,600.00	63 %
SECURITY	0.00	0.00	0.00	
CLEAN UP (Sanitation)			0.00	
OTHER:			0.00	
SUB TOTALS	1,495.00	4,155.00	5,650.00	73.5%

TOTAL ELIGIBLE EXPENSES: \$ 5,650.00 (50% = \$ 2,825.00)
list the 50% or less as the amount requested on page 1.

IF YOU ARE REQUESTING SPONSORSHIP FROM A CITY OF ROSWELL DEPARTMENT – COMPLETE THE FOLLOWING:

DEPARTMENT	TYPE OF SPONSORSHIP	ESTIMATED COST	*City use only*

IF YOU ARE REQUESTING CITY EMPLOYEES – PLEASE COMPLETE THE FOLLOWING:

DEPARTMENT	TYPE OF WORK REQUESTED	# OF EMPLOYEES	DATES/TIME REQUIRED	TOTAL HOURS

IF YOU ARE REQUESTING CITY EQUIPMENT – PLEASE COMPLETE THE FOLLOWING:

DEPARTMENT	TYPE OF EQUIPMENT	EST COST per day	# DAYS REQUIRED	TOTAL COST *City use only*

	A	B	C	D
1	Proposed Budget 2016			
2	Provided by: Barbara Gomez, Event Coordinator			
3				
4	EVENT EXPENSES			
5		Description	Memo	
6		CCR Timing	Race timing	\$1,550.00
7		Fairfield Inn	Lodging - timers	\$150.00
8		NM State Parks	Use Fee	\$250.00
9		Event Coordinator	Misc race expense	\$250.00
10		Event	Coordinator	\$1,600.00
11		Reflections & Recovery	Donation	\$10,000.00
12		Southwest Printers	Printing	\$300.00
13		Newspaper Advertisement		\$850.00
14		Magazine Advertisement		\$350.00
15		Radio Ads		\$1,500.00
16		Internet / Facebook Ads		\$1,000.00
17		Other	T-shirts/ Award bottles	\$1,600.00
18				
19			Total	\$19,400.00
20	Lodgers Tax Eligible			
21	Advertisement	Printing		\$300.00
22		Newspaper Ads		\$850.00
23		Magazine		\$350.00
24		Radio Ads		\$1,500.00
25		Internet / Facebook Ads		\$1,000.00
26		Other	SWAG - t-shirts / Bottles	\$1,600.00
27				
28			Total	\$5,600.00

2015 EVENT INFORMATION:

5TH Annual Xcel Energy Tour de Ocho Millas: September 12, 2015

Awarded Amount: \$2,000.00 Reimbursed Amount: \$1,854.99

1. Event Report (includes summarized survey information)
2. Event Financial Report
3. Lodgers' Tax Eligible Financial Report
4. Survey Form
5. Survey results summarized



**CITY OF ROSWELL
LODGERS' TAX FUNDS
EVENT REPORT**

NAME OF EVENT: 5th Annual Excel Energy Tour de Ocho Millas	
DATE(S) OF EVENT: Saturday, September 12, 2015	
NAME OF ORGANIZATION SPONSORING EVENT: Reflections & Recovery	
NAME OF CONTACT PERSON Barbara Gomez / Lendell Nolan	
MAILING ADDRESS: P.O. Box 721	
CITY/STATE/ZIP Roswell, NM 88202	
PHONE:	CELL PHONE: 575-626-8033/575-317-7169
E-MAIL ADDRESS (optional): info@tourdeochomillas.com	

REPORT ON THE OUTCOME OF THE EVENT:

Overall the race was a success. The number of new and out of town racers increased. We increased advertisement to include more social media and cross promotions with other like races, bike shops and sporting type events such as 5K races, etc. We sought out vendors who would give us better pricing in order to increase our marketing budget. Racers were able to pick up their t-shirts, bibs and race into the night before the race and appreciated the dinner provided by Grace Community Church. We encouraged overnight stays in a local hotel by securing a discount.

DESCRIBE ADVERTISING USED and IMPACT ON BRINGING VISITORS TO ROSWELL: (Attach copies or photos)

We advertised through our dedicated website www.tourdeochomillas.com, posters, postcards, Facebook, radio and newspaper.

WHAT WAS ESTIMATED VISITOR ATTENDANCE? 98 Registered Cyclists- 60 Family/Spectators = 158

HOW WAS IT MEASURED? Upon arrival all cyclists were asked to fill out a form that was created to include information requested by Lodger's Tax. Family and Spectators was a guesstimate based on family and friends who came with racers.

WHAT WAS THE ESTIMATED HOTEL/MOTEL, LODGING IMPACT? 35 reported they came from out of town. 13 hotel rooms rented for 1-2 nights totaling 15 nights. 4 reported they would be staying in an RV park. 15 reported they would be going back to their city. 3 did not reply.

DO YOU PLAN TO REQUEST LODGERS' TAX FUNDS NEXT YEAR? Yes

ADDITIONAL REMARKS TO THE OTB: This was our 5th Anniversary event. Along with adding an additional Event Coordinator this year the following are proposed additions to the 2016 event: Further review of expenses to expand budget and marketing reach. Build more cross-promotion partners including other cycling events in the region with hopes in building a circuit of SE cycling events. Also want to include a children's/family cycling race the day before the timed race to increase interest and overnight stays.

SIGNATURE:

B. Gomez

DATE: 12-4-15

- Attach copies or photos (see policy for documentation details) of advertising used.
- Provide sample of event survey used.
- Provide a complete summary of survey results for merchant, restaurant and lodging impact (how many room nights).
- Event Report is due ninety (90) calendar days following the last day of the event, an extension may be requested in writing if additional time is required due to unforeseen circumstances or emergency. (See policy for details.)

Last day of Event

9-12-15

Received date

DEC - 4 2015

days

83

	A	B	C	D	E
1	Financial Statement				
2	Provided by: Barbara Gomez, Event Coordinator				
3	EVENT REVENUE	Description	Memo		
4		Sports Registration.com	Racer Registration	\$2,380.00	
5		Xcel Energy	Sponsor	\$5,000.00	
6		Grace Community	Sponsor	\$2,500.00	
7		Marlin Wells & Asso	Sponsor	\$1,000.00	
8		Calvary Chapel	Sponsor	\$1,000.00	
9		Bank of the SW	Sponsor	\$500.00	
10		McClellan Oil Corp	Sponsor	\$500.00	
11		Rhodes Co	Sponsor	\$500.00	
12		Mark Taylor & Asso	Sponsor	\$500.00	
13		JP Stone Bank	Sponsor	\$250.00	
14		Armstrong Energy	Sponsor	\$250.00	
15		Armstrong Energy	Sponsor	\$200.00	
16		Robert Armstrong	Sponsor	\$100.00	
17		Bullock's Jewelry	Sponsor	\$100.00	
18		La Grone Funeral	Sponsor	\$100.00	
19		Misc donations	Sponsor	\$595.00	
20			Event Revenue TOTAL	\$15,475.00	
21					
22	EVENT EXPENSES				
23		Description	Memo		Ck or CC
24		CCR Timing	Deposit	\$300.00	Ck #1003
25		CCR Timing	Final Bill	\$1,234.75	Ck #1011
26		Fairfield Inn	CCR Timing lodging	\$143.24	Ck #1016
27		NM State Parks	Use Fee	\$250.00	Ck #1010
28		Lendell Nolan	Misc race expense	\$230.87	Ck #1016
29		Event	Co-coordinator - \$1500 + ta	\$1,606.88	
30		Southwest Printers	Sponsor Letter	\$8.90	Ck #1008
31		Reflections & Recovery	Donation	\$9,795.22	Ck #1004
32		Southwest Printers	1000 Postcards	\$71.90	Ck #11006
33		Southwest Printers	Posters(30), 250		
34			Brochures/3x8 Banner	\$219.55	Ck #1015
35			Roswell Daily Record	\$216.31	CC - BG
36			Carlsbad Argus	\$328.76	CC - BG
37		Radio Ads	Hobbs Daily News	\$177.04	CC - BG
38			Majestic Radio	\$268.75	Ck #1013
39			MTD Radio	\$293.28	Ck #1017
40			Pecos Valley Broadcasting	\$267.07	Ck #1014
41			Noal Mark Broadcasting	\$266.97	Ck #1012
42		Bluff City Sports	Racer t-shirts	\$921.35	Ck #11009
43		Polar Bottles	50 Award Bottles	\$679.00	Ck #1005
44			Total	\$17,279.84	
45					

	A	B	C	D	E
46	Lodgers Tax Eligible				
47	Advertisement	Southwest Printers	1000 Postcards	\$71.90	Ck #11006
48		Southwest Printers	Posters(30), 250 Brochures/3x8 Banner	\$219.55	Ck #1015
49		Newspaper	Roswell Daily Record	\$216.31	CC - BG
50			Carlsbad Argus	\$328.76	CC - BG
51			Hobbs Daily News	\$177.04	CC - BG
52		Radio Ads	Majestic Radio	\$268.75	Ck #1013
53			MTD Radio	\$293.28	Ck #1017
54			Pecos Valley Broadcasting	\$267.07	Ck #1014
55			Noal Mark Broadcasting	\$266.97	Ck #1012
56	Promotional	Bluff City Sports	Racer t-shirts	\$921.35	Ck #11009
57		Polar Bottles	50 Award Bottles	\$679.00	Ck #1005
58					
59			Total	\$3,709.98	

EVENT SURVEY

NAME OF EVENT (Please Print) 2015 Tour de Ocho Millas

Did you travel from out of town to come to this event? (circle one) Yes No

If so, from what city, state or country did you travel?

Will you be going back to your home city tonight? (circle one) Yes No

If you are not going home, are you staying at:

- 1) A hotel
- 2) An RV park
- 3) other - please explain

If staying the night, how many rooms will you get for your family and how many nights will you be staying?

of Rooms :

of Nights :

Have you attended this event in the past? (circle one) Yes No

Do you plan to attend this event in the future? (circle one) Yes No

How did you find out about this event?

Did you eat at any restaurants in Roswell? (circle one) Yes No

Did you shop Roswell during your visit? (circle one) Yes No

Thank you for participating in this survey, your help is greatly appreciated.

	A	B	C
47		73	
48			
49	Do you plan to attend this event in the future?		
50	Yes	68	
51	No	0	
52	No Answer / IDK?	5	
53		73	
54	How did you find out about this event		
55	Active.com	1	
56	Ad	2	
57	Banner on Street	3	
58	Brother	1	
59	Church	1	
60	Community	1	
61	Co-worker	2	
62	David Peschka	1	
63	e-mail	1	
64	Facebook	3	
65	Flyer	2	
66	Friends	13	
67	Internet / Online	5	
68	Lendell, Perry, Laraul	1	
69	Newspaper	9	
70	NM Sports on line	1	
71	Other cyclists	1	
72	Pamplet / 5th year	1	
73	Perry Toles	1	
74	Poster	1	
75	Previous racer	4	
76	RR	1	
77	School	1	
78	Senior Olympics	1	
79	Son	1	
80	Sponsor	1	
81	Spouse	1	
82	Stranger	1	
83	Tour de Taco	1	
84	Word of mouth	5	
85	No Answer	5	
86		73	

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 12.

Meeting Date: 03/10/2016

COMMITTEE: Finance

CONTACT: Monica Garcia

CHAIR: Caleb Grant

ACTION REQUESTED:

Request approval of funding for the 2016 Roswell Hike It! & Spike It! 4-on4 Charity Flag Football Tournament in the amount of \$20,000.

BACKGROUND:

The 2016 Roswell Hike It! & Spike It! 4-on-4 Charity Flag Football Tournament has been funded since 2004. The 2016 Roswell Hike It! & Spike It! 4-on-4 Charity Flag Football Tournament is scheduled for May 27-29, 2016. The event hosted 580 teams last year. This event is a non-alcohol, non-tobacco family event which features 4-on-4 flag football. The location of the event is Cielo Grande Recreation Area.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

Lodgers' Tax Funding

- Visitor Promotion
- Hike It & Spike It! - budgeted.

LEGAL REVIEW:

Not applicable.

BOARD AND COMMITTEE ACTION:

The Occupancy Tax Board recommend funding at their meeting on February 23, 2016 and the Finance Committee recommend funding at their meeting on March 4, 2016.

STAFF RECOMMENDATION:

City Council consideration of funding for the 2016 Roswell Hike It! & Spike It! 4-on4 Charity Flag Football Tournament in the amount of \$20,000.

Attachments

2016 Roswell Hike It! & Spike It!



CITY OF ROSWELL –SPECIAL EVENT LODGERS' TAX FUNDS – APPLICATION

NAME OF EVENT: 2016 Roswell Hike It & Spike It 4-on-4 Charity Flag Football Tournament	
DATE(S) OF EVENT: May 27, 28 & 29, 2016	(application required 90 days prior to event)
NAME OF ORGANIZATION APPLYING FOR FUNDING: Roswell Gridiron/Character Counts! in Chaves County	

DESCRIBE EVENT: a non-alcohol, non-tobacco family event which features 4 on 4 flag football	
LOCATION OF EVENT: Cielo Grande Recreation Area	
HOW WILL YOU ADVERTISE AND MARKET THE EVENT? Advertising will be done in NM, CO, TX, AZ and CA by distributing brochures and posters. The use of television and radio advertising will be done statewide. A well maintained and user friendly web site will allow access to our event all over the world. A local bank will insert flyers into March and April statements in 7 NM cities.	
HOW WILL ATTENDANCE AND ORIGIN BE MEASURED? Through team entries and on site Roswell Police Department spectator estimates.	
ESTIMATED TOTAL # OF ATTENDEES: 42500	EST. # ATTENDEES FROM OUTSIDE CHAVES CO.: 11500
HAVE YOU DISCUSSED SPECIAL ROOM PACKAGES DURING YOUR EVENT WITH A ROSWELL LODGING FACILITY? Yes	
WHAT PERCENTAGE OF YOUR MARKETING BUDGET WILL BE USED OUTSIDE OF ROSWELL? 70 %	
WILL YOU HAVE A WEBSITE FOR YOUR EVENT? Yes	
EVENT WEBSITE (if applicable): www.roswellgridiron.com	

LIST FULL AMOUNT OF MARKETING/ADVERTISING and OTHER ELIGIBLE EXPENSES ON PAGE 2.

REMEMBER: FUNDING IS PROCESSED ON A REIMBURSEMENT BASIS AT 50% OF ELIGIBLE EXPENSES UP TO THE AMOUNT APPROVED (a one-to-one match)

A REQUEST OF \$25,000 and up may require a signed contract with the City of Roswell.

PAID receipts for eligible expenses must be turned in for reimbursement.

Requested Funding must equal 50% or less of the Total Eligible Expenses listing on Page 2

AMOUNT REQUESTED \$ 20,000

IF YOU ARE REQUESTING SPONSORSHIP, PERSONNEL OR EQUIPMENT FROM ANY CITY DEPARTMENT - COMPLETE ON PAGE 2.

RULES AND REGULATIONS

I UNDERSTAND THAT THESE ARE PUBLIC FUNDS AND THEY ARE TO BE ADMINISTERED ACCORDING TO STATE LAW AND CITY ORDINANCES, AND I AGREE TO SUMBIT A FOLLOW UP REPORT WITH A FINANCIAL STATEMENT WITHIN NINETY (90) DAYS FOLLOWING THE EVENT OR I MAY FORFEIT THE FUNDS AS WELL AS ELIGIBILITY FOR FUTURE FUNDING. I AGREE TO USE THE CITY LOGO AND/OR "PAID IN PART BY THE CITY OF ROSWELL LODGERS' TAX" ON ALL ADVERTISING, VERBAL OR WRITTEN. I UNDERSTAND THAT THIS APPLICATION CONSTITUTES A CONTRACT BETWEEN THE CITY OF ROSWELL AND THE ORGANIZATION TO RECEIVE THE FUNDS, SHOULD THE FUNDS BE APPROVED BY THE OCCUPANCY TAX ADVISORY BOARD AND THE CITY OF ROSWELL GOVERNING BODY. I UNDERSTAND FUNDING MAY BE DENIED OR THAT APPROVED FUNDING AMOUNTS MAY DIFFER FROM THE AMOUNT REQUESTED ON THE APPLICATION. I ALSO UNDERSTAND THAT THE DISBURSEMENT OF FUNDS IS ON A DRAWDOWN REIMBURSEMENT BASIS (matched by Lodgers' Tax at 50% up to the funded amount, a one-to-one match).

NAME (PRINT) OF APPLICANT MAKING REQUEST: Carleton L. Avery		
SIGNATURE OF APPLICANT:		
(SEND CHECK TO) ADDRESS / CITY / STATE / ZIP: Roswell Gridiron		
P.O. 70	Roswell, NM	88202-0070
PHONE: 575-627-2398	CELL: 575-317-7707	E-MAIL: clavery@cableone.net
DATE SUBMITTED: FEB 16 2016	90 DAYS? <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	TO BE PRESENTED AT MEETING ON: 2-23-16

➤ ATTACH TOTAL PROPOSED BUDGET FOR EVENT ALONG WITH A DETAILED ADVERTISING/MARKETING BUDGET.

➤ PLEASE FEEL FREE TO ADD ADDITIONAL PAGES, SAMPLES OF ADS OR BROCHURE ARTWORK.

➤ PLEASE PROVIDE ORIGINAL APPLICATION PLUS (+) 5 COPIES OF APPLICATION, ADDITIONAL PAGES AND /OR SAMPLES

➤ MAIL OR DELIVER TO CITY OF ROSWELL, c/o Lodger Tax Grant Request, 425 N RICHARDSON, (P O BOX 1838), ROSWELL, NM 88202-1838

* SEE MEETING SCHEDULE FOR APPLICATION DUE DATES. (These are "Received by" dates, not postmarked dates.) Revised Jan 7, 2016

NAME OF EVENT: 2016 Roswell Hike It & Spike It 4-on-4 Charity Flag Football Tournament
DATE(S) OF EVENT: May 27, 28 & 29, 2016
NAME OF ORGANIZATION: Roswell Gridiron/Character Counts! in Chaves County

PROPOSED ELIGIBLE EXPENSES:

ELIGIBLE EXPENSES:	LOCAL AMOUNT	OUT –OF-TOWN AMOUNT	TOTAL AMOUNT	Out-of-Town %
NEWSPAPER	0.00	0.00	0.00	
MAGAZINE	0.00	0.00	0.00	
RADIO	3,000.00	7,000.00	10,000.00	70
TELEVISION	750.00	1,750.00	2,500.00	70
INTERNET	360.00	840.00	1,200.00	70
PRINTING (brochures, posters, cards)	3,510.00	8,190.00	11,700.00	70
MAILING	1,350.00	3,150.00	4,500.00	70
T-SHIRTS (or other marketing items)	31,000.00		31,000.00	
SECURITY	2,000.00		2,000.00	
CLEAN UP (Sanitation)	2,678.00		2,678.00	
OTHER:			0.00	
SUB TOTALS	44,648.00	20,930.00	65,578.00	

TOTAL ELIGIBLE EXPENSES: \$ 65,578.00 (50% = \$ 32,789.00)
list the 50% or less as the amount requested on page 1.

IF YOU ARE REQUESTING SPONSORSHIP FROM A CITY OF ROSWELL DEPARTMENT – COMPLETE THE FOLLOWING:

DEPARTMENT	TYPE OF SPONSORSHIP	ESTIMATED COST	*City use only*

IF YOU ARE REQUESTING CITY EMPLOYEES – PLEASE COMPLETE THE FOLLOWING:

DEPARTMENT	TYPE OF WORK REQUESTED	# OF EMPLOYEES	DATES/TIME REQUIRED	TOTAL HOURS
Parks & Recreation Department	Erect Fence	3	5/25/16 9am-4pm	6
Sanitation	Deliver Dumpsters	1	5/25/16 9am-12pm	3
Police Department	Patrol Event	4	5/27/16 - 5/29/16	26
Fire Department	Medical - Safety	4	5/27/16 - 5/29/16	26
Special Electronics	Setup Electrical	1	5/26/16 10am-?	4
Parks & Recreation Department	Misc	4	5/25/16 - 5/29/16 ?	24

IF YOU ARE REQUESTING CITY EQUIPMENT – PLEASE COMPLETE THE FOLLOWING:

DEPARTMENT	TYPE OF EQUIPMENT	EST COST per day	# DAYS REQUIRED	TOTAL COST *City use only*
Parks & Recreation Department	Stage	15.00	3	
Parks & Recreation Department	Flagging	5.00	3	
Parks & Recreation Department	Utility Vehicles	50.00	3	
Parks & Recreation Department	Generator	25.00	3	

2015 EVENT INFORMATION:

**Roswell Hike It! & Spike It! 4-on-4 Charity Flag Football Tournament:
May 22 - 24, 2015**

Awarded Amount: \$20,000.00 Reimbursed Amount: \$20,000.00

1. Event Report
2. Fact Sheet
3. Roswell Economic Impact Summary



**CITY OF ROSWELL
LODGERS' TAX FUNDS
EVENT REPORT**

NAME OF EVENT: Roswell Hike It & Spike It 4-on-4 Charity Flag Football Tournament	
DATE(S) OF EVENT: May 22, 23, 24, 2015	
NAME OF ORGANIZATION SPONSORING EVENT: Character Counts! in Chaves County	
NAME OF CONTACT PERSON: Cla Avery	
MAILING ADDRESS: 226 N. Main, P.O. Box 70	
CITY / STATE / ZIP: Roswell, NM 88202-0070	
PHONE: 575-627-2398	CELL PHONE: 575-317-7707
E-MAIL ADDRESS (optional): claavery@cableone.net	

REPORT ON THE OUTCOME OF THE EVENT:

See attached Estimated Economic Impact and Fact Sheet. No hotel rooms in Roswell or Artesia. Teams were having to stay in Carlsbad, Portales, Ruidoso, etc.

DESCRIBE ADVERTISING USED and IMPACT ON BRINGING VISITORS TO ROSWELL: (Attach copies or photos)

Team entry brochures mailed to previous players and distributed regionally along with posters. Web site, email blasts, TV & Radio spots, as well as, player shirts given to each player. See attached Estimated Economic Impact and Fact Sheet.

WHAT WAS ESTIMATED VISITOR ATTENDANCE? See attached

HOW WAS IT MEASURED? See attached

WHAT WAS THE ESTIMATED HOTEL/MOTEL, LODGING IMPACT?
See above

DO YOU PLAN TO REQUEST LODGERS' TAX FUNDS NEXT YEAR? Yes

ADDITIONAL REMARKS TO THE OTB:

SIGNATURE:

DATE: 7-15-15

- Attach copies or photos (see policy for documentation details) of advertising used.
- Provide sample of event survey used.
- Provide a complete summary of survey results for merchant, restaurant and lodging impact (how many room nights).
- Event Report is due ninety (90) calendar days following the last day of the event, an extension may be requested in writing if additional time is required due to unforeseen circumstances or emergency. (See policy for details.)

Last day of Event 5-24-15 Received date JUL 21 2015 days 58

'15 HIKE IT! & SPIKE IT! FACT SHEET

- 20th Annual Event
- Memorial Day Weekend - May 22nd, 23rd, and 24th 2015
- World's Largest 4-on-4 flag football tournament
- Roswell's largest weekend event
- World's Largest Pay Out - \$15,000 Cash
- 2015 - 580 teams - 3,834 players - Seven players on normal teams - Eight players on "Show Me the Money", Over 30 and Co-Ed teams – 41 divisions playing on 40 Fields simultaneously through the weekend
- 2015 - 20 states represented
- 2015 - Estimated Total Attendance - 44,000
- 2015 - **Show Me the Money** division winners:
1st Looney Tunes - Dallas, TX, 2nd Wet N Dirty - Jacksonville, FL,
3rd Dream Team - Cypress, CA
- Players range in age from 5 to 54
- 2015 - 802 Female players
- Charity Donations - United Way of Chaves County \$5,000, New Mexico Youth Challenge Academy \$2,000, First Tee of Roswell \$1,000, Roswell High Cheerleaders \$1,000, GHS & RHS Key Clubs, \$800, Church on the Move, \$1,500 - \$11,300.00
- Regular division - \$280.00 entry fee
- Show Me the Money Men - \$560.00 entry
- 500 Volunteers
- Public Funding sources - City of Roswell Lodgers Tax \$20,000.00
- Web site www.roswellgridiron.com
- Contact: Cla Avery – Local Tournament Organizer –
www.roswellgridiron.com

ROSWELL GRIDIRON "HIKE IT & SPIKE IT" 4-ON-4 CHARITY FLAG FOOTBALL TOURNAMENT - 2015

For your interest we have put together our estimated economic impact statement based upon 580 teams (3,810 players) in 41 divisions playing on 40 fields.

Teams - 580

Seven (7) players each – Show Me the Money, Over 30 & Over 35 teams (2 divisions) and Co-Ed teams (6 divisions) were allowed eight (8) players.

Total – 3,834

Family/Friends w/teams = 1:1 ratio 3,834

Total = 7,668

36% in town – (2,760) @ \$70 per day

\$193,233.60

64% out of town – (4,907) @ \$128 per day

\$628,162.56

TOTAL

\$821,396.16

Multiple days (2)

\$1,642,792.32

Police estimates of Crowd size 44,000 minus players and family/friends (7,668) 36,332

On site expenditures

@ \$30 (2 meals plus gas and souvenir) \$1,089,960.00

Multiple days (2) \$2,179,920.00

Total direct economic impact = \$3,822,712.32

Total indirect economic impact (3.7 multiplier) = \$14,144,035.58

Cla Avery, Jim Matteucci

Co-Local Tournament Organizers

Roswell Hike It & Spike It 4-on-4 Charity Flag Football Tournament

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 13.

Meeting Date: 03/10/2016

COMMITTEE: N/A

CONTACT: Sharon Coll

CHAIR: N/A

ACTION REQUESTED:

Approval of the minutes from the February 11, 2016 Regular City Council meeting.

BACKGROUND:

Not applicable.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

Not applicable.

LEGAL REVIEW:

Not applicable.

BOARD AND COMMITTEE ACTION:

Not applicable.

STAFF RECOMMENDATION:

City Council consideration of approval of the February 11, 2016 Regular City Council meeting minutes.

Attachments

February 11, 2016 Regular City Council minutes

Regular Meeting of the Roswell City Council
Held in the Bassett Auditorium at the Roswell Museum and Arts Center

Thursday, February 11, 2016 at 6:00 p.m.

The meeting convened with Mayor Kintigh presiding and Councilors Perry, Sandoval, Sanchez, Denny, Velasquez, Henderson, Grant, Oropesa and Best being present and Councilor Mackey being absent. Councilor Henderson led in Prayer and Councilor Velasquez led in the Pledge of Allegiance.

Notice of this meeting was given to the public in compliance with Sections 10-15-1 through 10-15-4 NMSA 1978 and Resolution 15-56.

Mayor Kintigh stated that after three plus terms, Councilor Velasquez decided not to seek re-election and therefore this will be the last regular City Council meeting she serves. A short recess began at 6:04 p.m. to honor Councilor Velasquez. City Council was back in session at 6:18 p.m. with Councilor Mackey absent.

Multiple Councilors thanked Councilor Velasquez for her service, dedication and determination.

Councilor Perry recognized and thanked Donavan Guilez and Caden Bair, boy scouts from troop 145, for being present to observe the City Council meeting. Councilor Perry moved to approve the agenda for the February 11, 2016 regular City Council meeting to include the following: Non Action Items: Roswell-Phoenix flight marketing update and Pecos Trails Transit update; Public Hearings: Proposed Ordinance 16-01 – municipal gross receipts tax, Proposed Ordinance 16-02 – to repeal Ordinance 1295, Proposed Ordinance 16-03 – to repeal Ordinance 1269 and Proposed Ordinance 16-04 – authorizing the sale of a vacant parcel of land described as consisting of 9.0 +/- acres located at RIAC; Consent Items: Bids and RFP's, RIAC Leases, Resolution 16-08 – Weeds, Resolution 16-09 – Condemnations, Lodgers' Tax requests, remove the 2016 UFO Festival Lodgers' Tax request in the amount of \$80,000 and place as 6a under New Business/Regular Item, and Minutes from the January 14, 2016 regular City Council meeting; New Business/Regular Items: Resolution 16-07 – Drinking Water State Revolving Loan Project 32-05-DW, Resolution 16-10 – Senior Olympics, Resolution 16-11 – Roswell Filmfest & Cosmicon, Resolution 16-12 – Design and Engineering of the new Yucca Recreation Center, Resolution 16-13 – The Burt Murphy Family Splash Pad, Proposed Ordinance 16-05 – drilling of new domestic wells within the City limits, Discuss dates for a proposed City Council retreat, Presentation of the Feasibility Study for the Roswell Convention and Civic Center and Financial update presentation; Department Reports; Closed Sessions: pursuant to NMSA 1978, § 10-15-1(H)(8), pursuant to NMSA 1978, § 10-15-1(H)(7) and pursuant to NMSA 1978, § 10-15-1(H)(2). Councilor Grant was the second. A voice vote was 9-0 and the motion passed with Councilor Mackey being absent.

NON-ACTION ITEMS

Roswell – Phoenix flight marketing update. Dave Hayduk gave an update on the Roswell – Phoenix flight marketing. Marketing products include Inbound and Outbound Creative Design Comps, Media and Digital Plans, Banners and Billboards.

Pecos Trails Transit Update. Anna Aragon gave an update on the Pecos Trails Transit. The vision statement for the Pecos Trails Transit System is “To improve the quality of life through economic development, cultural enjoyment and access to medical and educational services and all the amenities of the area.” The mission statement is “To deliver the best possible public transportation in the Roswell area in a safe and efficient manner.” Ms. Aragon discussed bus inventory, new vehicles, inspection check-list and bus routes.

PUBLIC PARTICIPATION ON AGENDA ITEMS

Participants are mentioned on each item.

FOR THE RECORD: Councilor Perry left the meeting at 6:51 p.m.

PUBLIC HEARINGS

Proposed Ordinance 16-01 – To hold a public hearing on Proposed Ordinance 16-01 and to vote on the adoption of Proposed Ordinance 16-01. Councilor Grant moved to approve Proposed Ordinance 16-01. Councilor Sandoval was the second. Mr. Polasek gave a presentation on Proposed Ordinances 16-01, 16-02 and 16-03. If adopted, Proposed Ordinance 16-01 will replace two one sixteenth of one percent taxes with a municipal gross receipts tax of one eighth of one percent which will be dedicated to general municipal purposes. This tax will not result in any net increase in the gross receipts tax rates imposed by the City. If adopted, Proposed Ordinance 16-02 will repeal Ordinance 1269, which currently imposes a one sixteenth of one percent gross receipts tax, the revenues from which are dedicated to environmental services. If adopted, Proposed Ordinance 16-03 will repeal Ordinance 1295, which currently imposes a one sixteenth of one percent gross receipts tax, the revenues from which are dedicated by the City in equal part to enhancing police and fire department budgets.

IN FAVOR: NONE

OPPOSED: NONE

A roll call vote was as follows: Art Sandoval-yes, Savino Sanchez-yes, Tabitha Denny-yes, Elena Velasquez-yes, Steve Henderson-yes, Caleb Grant-yes, Juan Oropesa-yes, Jeanine Best-yes and the motion passed with Councilors Perry and Mackey being absent.

Proposed Ordinance 16-02 – To hold a public hearing on Proposed Ordinance 16-02 and to vote on the adoption of Proposed Ordinance 16-02. Councilor Grant moved to approve Proposed Ordinance 16-02. Councilor Velasquez was the second.

IN FAVOR: NONE

OPPOSED: NONE

A roll call vote was as follows: Art Sandoval-yes, Savino Sanchez-yes, Tabitha Denny-yes, Elena Velasquez-yes, Steve Henderson-yes, Caleb Grant-yes, Juan Oropesa-yes, Jeanine Best-yes and the motion passed with Councilors Perry and Mackey being absent.

Proposed Ordinance 16-03 – To hold a public hearing on Proposed Ordinance 16-03 and to vote on the adoption of Proposed Ordinance 16-03. Councilor Grant moved to approve Proposed Ordinance 16-03. Councilor Velasquez was the second.

IN FAVOR: NONE

OPPOSED: NONE

A roll call vote was as follows: Art Sandoval-yes, Savino Sanchez-yes, Tabitha Denny-yes, Elena Velasquez-yes, Steve Henderson-yes, Caleb Grant-yes, Juan Oropesa-yes, Jeanine Best-yes and the motion passed with Councilors Perry and Mackey being absent.

FOR THE RECORD: Councilor Mackey joined the meeting at 7:06 p.m.

Proposed Ordinance 16-04 – To hold a public hearing authorizing the sale of a vacant parcel of land described as consisting of 9.0 +/- acres, located at the Roswell International Air Center, South Gail Harris Street and East Martin Street. Councilor Sandoval moved to approve Proposed Ordinance 16-04. Councilor Grant was the second. Mr. Polasek gave a presentation and stated the property purchase price, per appraisal data, is offered at \$250,000. The sale of the property will provide for property taxes in addition to gross receipts taxes and occupancy taxes from the proposed development. The purposes of selling the land are the following:

- To allow for the sale of excess municipally owned property
- To allow Buyer to develop lodging facilities, multi-family housing and dining
- To increase the City's tax base and to promote development and growth in the area

IN FAVOR: John Mulcahy and Ram Kunwar

OPPOSED: NONE

A roll call vote was as follows: Natasha Mackey-yes, Art Sandoval-yes, Savino Sanchez-yes, Tabitha Denny-yes, Elena Velasquez-yes, Steve Henderson-yes, Caleb Grant-yes, Juan Oropesa-yes, Jeanine Best-yes and the motion passed with Councilor Perry being absent.

CONSENT ITEMS

Bids & RFP'S

Request approval of the Yucca Recreation Center RFP Award for Architectural Services. The City has begun the process to construct a new recreation center. Huitt-Zollars was selected by the review committee as the best vendor for this project. Huitt-Zollars has had several successful projects similar in nature within New Mexico to include several other states. The design package will be a new Yucca Recreation Center that will be able to offer services in the same manner as

the current Yucca Recreation Center. The project award for architectural services will not exceed \$500,000 including reimbursables and GRT.

Request to authorize purchase of three (3) Chevrolet Tahoes for the Police Department. The new units will replace three high mileage Crown Victoria's currently in the fleet. These units were approved in the FY2016 Final Budget and are being purchased on state contract for \$33,498 each.

RIAC Leases

To authorize Kerry Hunter, an individual, to renew his current lease agreement on Building No. 117. Kerry Hunter leases the building for the purpose of vehicle storage and maintenance. The building is 4,736 square feet. New rent amount is \$457.00 monthly; \$5,484.00 annually; rent adjustment is 2.7%. Kerry Hunter has been a customer since March 1993. The term is from March 1, 2016 through February 28, 2017.

Request to authorize Don and Angel Mayes, as individuals, to renew their current lease agreement on "T" Hangar Building No. 120, Space 2. Don and Angel Mayes lease the building for the purpose of aircraft storage and maintenance. The building is 1,002 square feet. New rent amount is \$173.00 monthly; \$2,076.00 annually; rent adjustment is 2.4%. Don and Angel Mayes have been customers since February 2010. The term is from March 1, 2016 through February 28, 2017.

AvFlight Roswell Corporation is requesting additional rent abatement of \$16,978.98 to rent abatement of \$69,492.94 on Hangar No. 1532 approved by the City Council on October 8, 2015. AvFlight Roswell Corporation is requesting additional rent abatement due to items not found during the initial quote process and items required by the City Building Inspector and the State Electrical Inspector. The additional rent abatement is in the amount of \$16,978.98 in accordance with RIAC Rent Abatement Policy. Total rent abatement for this project is \$86,471.92.

Resolution 16-08 – Weeds. Approximately three (3) separate properties within the City.

Resolution 16-09 – Condemnations. Approximately six (6) dilapidated structures within the City.

Lodgers' Tax Request

Request for funding of Lodgers' Tax for the Jesse Andrus & Mike Hillman Memorial Rodeo. The Jesse Andrus & Mike Hillman Memorial Rodeo has been funded by the City of Roswell since 2011. The request for funding is in the amount of \$3,500.00. The event is scheduled for May 20-22, 2016 and will be held at the Eastern New Mexico State Fair Arena.

Request for funding of Lodgers' Tax for the 32nd Annual Milkman Triathlon. The Milkman Triathlon has been funded by the City of Roswell since 2005. The request for funding is in the amount of \$1,500.00. The event is scheduled for June 4, 2016 and will be held at Lake Van.

NEW BUSINESS/ REGULAR ITEMS

Request funding of Lodgers' Tax for the 2016 UFO Festival. Councilor Grant moved to approve the request for funding of Lodgers' Tax for the 2016 UFO Festival. Councilor Henderson was the second. Ms. Garcia gave a presentation on the 2016 UFO Festival Lodgers' Tax request. The request is in the amount of up to \$80,000 on an advance draw down of eligible expenses at 100%, with a signed contract between the 2016 UFO Festival/MainStreet Roswell and the City of Roswell. The dates of the festival are June 30 through July 3, 2016. The event has been funded since 2012 through MainStreet Roswell. The festival draws an estimated 15,000 attendees. Darryl Burkfield and Peggy Seskey thanked the City for the support festival. Mayor Kintigh stated he took ownership for removing the item from consent and stated that City staff was not included in the planning of the festival. Mayor Kintigh asked to see MainStreet Roswell include City staff in the planning of the event. A voice vote was 9-0 and the motion passed with Councilor Perry being absent.

Resolution 16-07 – Request approval of Resolution 16-07 a resolution of the City of Roswell, New Mexico notifying the New Mexico Finance Authority that the City of Roswell supports and has required funding for additional large diameter water line construction associated with current Drinking Water State Revolving Loan Project 3205-DW. Councilor Grant moved to approve Resolution 16-07. Councilor Sandoval was the second. Mr. Najar gave a presentation on Resolution 16-07 stating the City is closing out a 36" water line project on Country Club Road which was funded in part with the New Mexico Finance Authority Drinking Water State Revolving Loan Fund Project 3205-DW. Due to the success of the project and capabilities of the City of Roswell to expedite design and construction of additional work, the funding agency would like to contribute additional funds to continue this project along Country Club Road. The original loan was \$2,000,000 with an approximate 0.25% annual interest rate. The City has been offered up to \$3,000,000 additional principal to continue construction with a 75% forgiveness of loan principal and cost of issuance. A voice vote was 9-0 and the motion passed with Councilor Perry being absent.

Resolution 16-10 – Request approval of Resolution 16-10 a budget amendment for the Senior Olympics. Councilor Grant moved to approve Resolution 16-10. Councilor Sandoval was the second. Ms. Garcia gave a presentation on Resolution 16-10. The budget amendment is in the amount of \$77,000 from the Lodgers' Tax Reserves for the Senior Olympics. Funding for the event will be on a reimbursement basis with a signed contract. A voice vote was 9-0 and the motion passed with Councilor Perry being absent.

Resolution 16-11 – Request approval of Resolution 16-11 a budget amendment for the Roswell Filmfest & Cosmicon. Councilor Grant moved to approve Resolution 16-11. Councilor Henderson was the second. Ms. Garcia discussed Resolution 16-11, stating the request is in the amount of \$35,000 from the Lodgers' Tax Reserves for Roswell Filmfest & Cosmicon. Funding for the event will be on a reimbursement basis with a signed contract. A voice vote was 9-0 and the motion passed with Councilor Perry being absent.

Resolution 16-12 – Request approval of Resolution 16-12 Reimbursement from the Environmental GRT that will be redirected into the General Fund and used for the Design & Engineering of the new Yucca Recreation Center. Councilor Grant moved to approve Resolution 16-12. Councilor Velasquez was the second. Ms. Garcia gave a presentation on Resolution 16-12 stating the project award will not exceed \$500,000. Funding in the amount of \$250,000 is provided by the State of NM Capital Outlay funding. The remaining \$250,000 would require the City to adopt, in advance of an executed contract, a reimbursement resolution. A voice vote was 9-0 and the motion passed with Councilor Perry being absent.

Resolution 16-13 – Request approval of Resolution 16-13 approving the name of the splash pad in Poe Corn Park as “The Burt Murphy Family Splash Pad”, and providing for an effective date. Councilor Best moved to approve Resolution 16-13. Councilor Grant was the second. Mr. Morris gave a presentation on Resolution 16-13. The total cost of the splash pad is \$450,000. The Burt Murphy family donated \$100,000 to the construction of the splash pad. A voice vote was 9-0 and the motion passed with Councilor Perry being absent.

Proposed Ordinance 16-05 – Request to advertise for a public hearing on Proposed Ordinance 16-05, which would place certain limitations on drilling of new domestic wells within the City limits. Councilor Denny moved to approve to advertise for a public hearing on Proposed Ordinance 16-05. Councilor Sandoval was the second. Mr. Zarr gave a presentation on Proposed Ordinance 16-05 stating if adopted, it will amend Chapter 26 of the Roswell City Code by placing limitations on the drilling of new domestic wells within the City limits. The purpose behind the ordinance is to protect the City’s underground water sources from contamination and depletion that can result from the presence of numerous domestic wells. The intent is to conserve and preserve the quality of water for the entire community. A voice vote was 9-0 and the motion passed with Councilor Perry being absent.

Discuss dates for proposed City Council retreat. Mr. Polasek discussed the City Council retreat. The City Council retreat is organized to discuss items and issues that affect the City. The suggested location for the retreat sessions is the Roswell Chamber of Commerce facility and proposed dates are Friday, March 18 and Saturday, March 19 from 9:00 a.m. until early afternoon each day.

FOR THE RECORD: Councilor Perry rejoined the meeting at 7:36 p.m.

Presentation and request for direction concerning the Feasibility Study prepared by Dekker/Perich/Sabatini for the Roswell Convention and Civic Center. Mr. Sabatini presented the Feasibility study concerning the Roswell Convention and Civic Center. The process of the study is the following:

- Assess existing facility and site
- Analyze current and recent bookings
- Review of neighboring facilities
- Provide improvement recommendations
- Create major addition scenario

- Perform financial analysis
- Make final recommendations

One recommendation is to add 54,000 square feet of meeting and exhibit space. The projected cost is \$20M+ for 86,000 square feet expansion and renovation. Another recommendation is to construct a 15,000 square foot addition of meeting and support space north of the existing Convention Center. The projected cost for the addition, renovation and upgrade of all amenities is approximately \$6-\$8M. Mr. Polasek stated staff will move forward with an RFP and get through the process in order for City Council to award.

DEPARTMENT REPORTS

Presentation – Financial Update. Mr. Polasek discussed the City financial update. The primary focus of the financial update is the General Fund, other items include:

- Short term projections
- Gross Receipts Tax
- Fiscal Management Contingency Plan
- Mid-Year Departmental Reviews

CLOSED SESSION

Councilor Sandoval moved to go into closed session, pursuant to NMSA 1978, § 10-15-1(H)(8), to discuss the purchase, acquisition or disposal of Real Property or Water Rights in which the City of Roswell is or may become a participant, pursuant to NMSA 1978, § 10-15-1(H)(7), to discuss attorney-client privilege pertaining to threatened or pending litigation in which the City of Roswell is or may become a participant and pursuant to NMSA 1978, § 10-15-1(H)(2), to discuss limited personnel matters. Councilor Perry was the second. A roll call vote was as follows: Jason Perry – yes, Natasha Mackey – yes, Art Sandoval – yes, Savino Sanchez – yes, Tabitha Denny – yes, Elena Velasquez – yes, Steve Henderson – yes, Caleb Grant – yes, Juan Oropesa – yes, Jeanine Best – yes and the motion passed.

FOR THE RECORD: The Mayor called a five (5) minute recess at 8:55 p.m.

The Council went into closed session at 9:00 p.m.

Councilor Sandoval stated that for the record the Council was back at 10:12 p.m. and they had a closed session pursuant to Section 10-15-1(H)(8) NMSA 1978; to discuss purchase, acquisition or disposal of real property or water rights in which the City of Roswell is or may become a participant; no action was taken and no votes made. Closed session pursuant NMSA 1978, § 10-15-1(H)(7); to discuss attorney-client privilege pertaining to threatened or pending litigation in which the City of Roswell may become a participant; no action was taken and no votes made. Closed session pursuant NMSA 1978, § 10-15-1 (H)(2); to discuss personnel matters; no action was taken and no votes made.

PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

None

ADJOURNMENT

Meeting adjourned at 10:14 p.m.

Approved on this 10th day of March, 2016.

(City Seal)

DENNIS KINTIGH, MAYOR

SHARON COLL, CITY CLERK

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 14.

Meeting Date: 03/10/2016

COMMITTEE: N/A

CONTACT: Sharon Coll

CHAIR: N/A

ACTION REQUESTED:

Approval of the minutes form the February 29, 2016 Special City Council meeting.

BACKGROUND:

Not applicable.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

Not applicable.

LEGAL REVIEW:

Not applicable.

BOARD AND COMMITTEE ACTION:

Not applicable.

STAFF RECOMMENDATION:

City Council consideration of approval of the February 29, 2016 Special City Council meeting minutes.

Attachments

February 29, 2016 Special City Council Minutes

**Special Meeting of the Roswell City Council
Held in the Bassett Auditorium at Roswell Museum and Art Center**

Monday, February 29, 2016 at 6:00 p.m.

Notice of this meeting was given to the public in compliance with Sections 10-15-1 through 10-15-4 NMSA 1978 and Resolution 15-56.

ROLL CALL

The meeting convened with Mayor Kintigh presiding and Councilors Sandoval, Sanchez, Oropesa, Denny, Henderson, Best, Velasquez, Perry and Grant being present; Councilor Mackey participating by telephone.

APPROVAL OF AGENDA

Councilor Perry moved to approve the February 29, 2016 Special City Council meeting agenda. Councilor Velasquez was the second. Councilor Velasquez moved to amend the agenda by removing Resolution 16-23 – to name 500 S. Richardson Ave, Subdivision Hedgcoxes, Block 23, Lot-ALL, to Cesar Chavez Park for the City of Roswell to become effective immediately and Resolution 16-24 – to name the new Yucca Recreation Center. Councilor Grant was the second. Councilor Velasquez wished to explain her motion and stated she hopes the community heals and will reconsider naming the recreation center “Cesar Chavez Recreation Center” at a later time. A voice vote was unanimous and the motion passed with Councilor Mackey participating by telephone. Mayor Kintigh called for a voice vote to approve the amended agenda. A voice vote was unanimous and the motion passed with Councilor Mackey participating by telephone.

REGULAR ITEMS

Financial Update – Mr. Polasek gave a presentation on the financial update. The primary focus is the general fund. Also discussed was closing the budget deficit and part of that process is considering all GRT related funds and working within means.

PUBLIC PARTICIPATION

The following individuals gave three minutes of their input on items one and two: Larry Connolly, Charlene Hernandez, Richard Garcia, Eloy Ortega, Bill Shepard, Helen Bertrand, Rebecca Taylor, Sergio Gonzalez, Leticia Gomez, Kerry Moore, Vanessa Tarango and Tom Jennings.

ADJOURN

Meeting adjourned at 6:57 p.m.

Approved on this 14th day of April, 2016.

(City Seal)

DENNIS KINTIGH, MAYOR

SHARON COLL, CITY CLERK

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 15.

Meeting Date: 03/10/2016

COMMITTEE: Finance

CONTACT: Monica Garcia

CHAIR: Caleb Grant

ACTION REQUESTED:

Resolution 16-19 - City Council is asked to consider Resolution 16-19 Budget Amendment for overtime for police services at the Eastern New Mexico State Fair - \$11,170. (Grant/Garcia)

BACKGROUND:

The City Council at the August 2015 meeting approved funding for the event. The overtime for police presence at the event was in the amount of \$14,170. The overtime is an allowable expense of Lodger's Tax Funds.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

Lodgers' Tax Reserves.

- Lodger' Tax - Visitor Promotion PR - \$11,170.

LEGAL REVIEW:

Not applicable.

BOARD AND COMMITTEE ACTION:

The Finance Committee recommended Resolution 16-19 Budget Amendment for overtime for police services at the Eastern New Mexico State Fair in the amount of \$11,170 at their meeting on March 3, 2016.

STAFF RECOMMENDATION:

City Council consideration of Resolution 16-19.

Attachments

Resolution 16-19

RESOLUTION NO. 16-19

A RESOLUTION OF THE CITY OF ROSWELL, NEW MEXICO AMENDING THE BUDGET FOR THE CITY OF ROSWELL FOR THE FISCAL YEAR ENDING JUNE 30, 2016.

WHEREAS, the governing body of the City of Roswell, State of New Mexico, has previously developed a budget for the fiscal year 2015-2016, ending June 30, 2016; and

WHEREAS, the City desires to amend said budget for the overtime for police presence at the Eastern New Mexico State Fair in the amount of \$11,170 from the Lodger's Tax Fund; and

WHEREAS, the overtime for police presence at the event is an allowable expense of Lodger's Tax Funds; and

WHEREAS, the City Council at their August 6, 2015 meeting approved funding from the Lodger's Tax Fund reserves for the Eastern New Mexico State Fair Event and the budget; and

WHEREAS, it is the majority opinion of the Governing Body that the proposed amended budget continues to meet fiscal requirements as currently determined for fiscal year 2016.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL, THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO hereby adopts the budget adjustment hereinabove described and respectfully requests approval for same from the Local Government Division of the Department of Finance and Administration, State of New Mexico.

PASSED, ADOPTED, SIGNED AND APPROVED this 10th day of March, 2016.

Dennis Kintigh, Mayor

CITY SEAL ATTEST:

Sharon Coll, City Clerk

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 16.

Meeting Date: 03/10/2016

COMMITTEE: Infrastructure

CONTACT: Louis Najar

CHAIR: Jeanine Corn-Best

ACTION REQUESTED:

Resolution 16-14 - Request approval of Resolution 16-14 the adoption of the annual Community Development Block Grant Policies and Plans. (Best/Morris)

BACKGROUND:

The policies included in Resolution 16-14 are required to be adopted by the City Council each year in order to maintain and apply for CDBG funding through the State.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

Not applicable.

LEGAL REVIEW:

Not applicable.

BOARD AND COMMITTEE ACTION:

The Infrastructure Committee recommended adoption of Resolution 16-14 to the City Council at its February 16, 2016 meeting.

STAFF RECOMMENDATION:

City Council consideration of Resolution 16-14 as presented.

Attachments

Resolution 16-14 CDBG Policies and Plans

RESOLUTION 16-14

ADOPTION OF ANNUAL COMMUNITY DEVELOPMENT BLOCK GRANT POLICIES & PLANS

WHEREAS, municipalities or other entities that accept Community Development Block Grant Funds must adopt certain mandated federal policies annually; and

WHEREAS, the City of Roswell, hereinafter referred to as the “City,” wishes to ensure compliance with federal guidelines by adopting the following required policies or certifications:

Citizen Participation Plan	encourages citizen participation with particular emphasis on low and moderate income persons; outlines the objectives and plan to implement those objectives
Fair Housing Resolution & Assessment	certifies commitment to further the efforts of Fair Housing which prohibits discrimination in the sale, rental, leasing and financing of housing or land to be used for the construction of housing on the basis of race, color, religion, sex, disability, familial status or national origin
Residential Anti-Displacement & Relocation Assistance Plan	certifies that it will replace all occupied and available vacant low/moderate-income dwelling units demolished or converted to a use other than as a low/moderate income housing as a direct result of activities assisted with Housing and Community Development funds
Section 3 Plan	encourages the use of small local businesses and the hiring of low income residents of the community
Procurement Code	certifies that the City will comply with the New Mexico State Procurement Code

NOW THEREFORE, be it resolved that the City of Roswell adopts the above CDBG policies and plans which will have to be re-adopted annually.

PASSED, APPROVED, SIGNED, AND ADOPTED at a duly called and convened regular meeting of the governing body of the City of Roswell this 10th day of March 2016.

Attest:

Dennis Kintigh, Mayor

Sharon Coll, City Clerk

Citizen Participation Plan

Introduction

In accordance with the 1987 revisions to the Housing and Community Development Act and in an effort to further encourage citizen participation, the **City of Roswell** has prepared and adopted this Citizen Participation Plan.

Objective A

The **City of Roswell** will provide for and encourage citizen participation within its area of jurisdiction, with particular emphasis on participation by persons of low- and moderate-income.

Action items:

1. Adopt and circulate an Open Meetings Resolution which provides citizens with reasonable notice of county/municipality upcoming meetings, actions and functions.
2. Develop press releases on county/municipality meetings, actions and hearings, and circulate to newspapers, radio and television media.
3. Develop and maintain listing of groups and representative of low- and moderate-income persons, and include on mailing lists of announcements, notices, press releases, etc.

Objective B

The **City of Roswell** will provide citizens with reasonable and timely access to local meetings, information and records relating to the proposed and actual use of CDBG funds.

Action items:

1. Public notices, press releases, etc., should allow for a maximum length of notice to citizens.
2. Appropriate information and records relating to the proposed and actual use of CDBG funds must be available upon request to all citizens. Personnel and income records may be exempted from these requirements.
3. Meetings, hearing, etc., should be conducted at times and locations conducive to public attendance, e.g., evenings, Saturdays.

Objective C

The **City of Roswell** will provide technical assistance to groups and representatives of low- and moderate-income persons that request assistance in developing proposals. Note: the level and type of assistance is to be determined by the city.

Action items:

1. Low- and moderate-income groups should be advised that technical assistance, particularly in the area of community development, is available from the county/municipality upon request.
2. Document technical assistance provided to such groups and has documentation available for review.

Objective D

The **City of Roswell** will provide a minimum of two public hearings to obtain citizen participation and respond to proposals and questions at all stages of the Community Development Block Grant Program.

Action items:

1. Advise citizens of the CDBG program objectives, range of activities that can be applied for, and other pertinent information.

2. Conduct a minimum of two public hearings:
 - a. One public hearing will be held to advise citizens of the program objectives and range of activities that can be applied for, and to obtain the citizen's views on community development and housing needs, to include the needs of low- and moderate-income people. This hearing will take place prior to the selection of the project to be submitted to the state for CDBG funding assistance.
 - b. A second public hearing will be held to review program performances, past use of funds and make available to the public its community development and housing needs, including the needs of low- and moderate-income families, and the activities to be undertaken to meet such needs.
3. Publish public hearing notices in the non-legal section of newspapers or in other local media.

Evidence of compliance with these regulations will be provided with each CDBG application, e.g., hearing notice minutes of public meetings, list of needs and activities to be undertaken, etc. Amendments to goals, objectives, and applications are also subject to public participation.

Objective E

The **City of Roswell** will provide timely written answers to written complaints and grievances within 15 working days where practical.

Action items:

1. Adopt complaint handling procedures or policies to insure that complaints or grievances are responded to within 15 days, if possible.
2. Allow for appeal of a decision to a neutral authority.
3. File a detailed record of all complaints or grievances and responses in one central location with easy public access.

Objective F

The **City of Roswell** will identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of residents can be reasonably expected to participate.

Action items:

1. Identify areas where large majorities of non-English speaking persons reside and make appropriate provisions when issues affecting these areas are to be discussed at public meetings, hearings, etc. Appropriate provisions will include having interpreters available at the meeting and having briefing material available in the appropriate language.
2. Maintain records/rosters of public hearing attendees and proceedings to verify compliance with this objective.

Mayor

Date

Fair Housing Resolution

A RESOLUTION OF THE MAYOR AND COUNCILORS OF THE CITY OF ROSWELL ADOPTING A FAIR HOUSING POLICY, MAKING KNOWN ITS COMMITMENT TO THE PRINCIPLE OF FAIR HOUSING AND DESCRIBING ACTIONS IT SHALL UNDERTAKE TO AFFIRMATIVELY FURTHER FAIR HOUSING.

WHEREAS, the Housing and Community Development act of 1974 as amended requires that all applicants for Community Development Block Grants funds certify that they shall affirmatively further fair housing;

WHEREAS, the Civil Rights Act of 1968 (commonly known as the Federal Fair Housing Act) and the Fair Housing Amendments Act of 1988 declare a national policy to prohibit discrimination in the sale, rental, leasing and financing of housing or land to be used for the construction of housing or in the provision of brokerage services, on the basis of race, color, religion, sex, disability, familial status or national origin;

WHEREAS, fairness is the foundation of the American system and reflects traditional American values; and

WHEREAS, discriminatory housing practices undermine the strength and vitality of America and its people.

NOW THEREFORE, be it resolved that the Mayor and Councilors for the City of Roswell hereby wish all persons living, working, doing business in, or traveling through the City of Roswell to know that:

- discrimination in the sale, rental, leasing, and financing of housing or land to be used for construction of housing, or in the provision of brokerage services on the basis of race, color, religion, sex, handicap, familial status or national origin is prohibited by Title VIII of the Fair Housing Act Amendments of 1988
- that it is the policy of the City of Roswell to implement programs, within the constraints of its resources, to ensure equal opportunity in housing for all persons regardless of race, color, religion, sex, handicap, familial status or national origin
- within available resources the City of Roswell will assist all persons who feel they have been discriminated against in housing issues on the basis of race, color, religion, sex, handicap, familial status or national origin to seek equality under existing federal and state laws to file a complaint with the New Mexico Attorney General's Office or the U.S. Department of Housing and Urban Development
- that the City of Roswell shall publicize this Resolution and thereby encouraging owners of rental properties, developers, builders and others involved with housing to become aware of their respective responsibilities and rights under the Fair Housing Amendments Act of 1988 and any applicable state or local laws or ordinances; and

- that the City of Roswell shall undertake the following actions to affirmatively further fair housing:
 - mail copies of this resolution to the real estate community, banks, developers, community organizations and local media
 - post copies of this resolution at identified locations
 - distribute flyers

PASSED AND ADOPTED by the Mayor and City Council of the City of Roswell on this 10th day of March 2016.

Dennis Kintigh, Mayor

Attest:

Sharon Coll, City Clerk

Fair Housing Self-Assessment

COMMUNITY OF: City of Roswell

1. To the best of your knowledge has your community been involved in any complaints regarding discrimination in the sale or rental of housing on the basis of race, color, religion, sex, national origin, familial status or handicap?
☐ Yes ☒ No
2. If yes, give a brief description of the nature of any complaints and resolutions.
3. Has your community adopted a Fair Housing Program to help local citizens be aware of their rights regarding fair housing under federal and state law and in filing a complaint if discrimination is suspected?
☒ Yes ☐ No
4. What do you perceive as the most potentially serious problem areas regarding discrimination in fair housing in your community?

Problem Area	Very Serious	Serious	Moderate	Not a Problem
Color				X
Familial Status				X
Handicap				X
National Origin				X
Race				X
Religion				X
Sex				X

5. Does your community contain any subsidized housing units?
☒ Yes ☐ No
6. As best as can be determined, do relevant public policies/practices regarding zoning and building codes have an adverse impact on the achievement of fair housing choice?
☐ Yes ☒ No
7. Are you aware of any practices in the local real estate community, as it relates to buying, selling, and renting homes, that may adversely affect the achievement of fair housing choice in your community?
☐ Yes ☒ No
8. Do your community records contain data on the actual number and percentage of persons residing in the community by race, color, religion, sex, national origin, age, handicap and familial status, as well as income characteristics by group?
☒ Yes ☐ No

9. Is information available to you that list major local employers by type and the number of people employed within your community by salary and racial group?

☒ Yes ☐ No

10. Is there public transportation available in your community?

☒ Yes ☐ No

11. Do your community records contain data on the total number of housing units in the community by type and the number of vacant units?

☒ Yes ☐ No

12. Does your community contain any housing for the handicapped such as group homes, independent living complexes, etc.?

☒ Yes ☐ No

13. Has your community participated in the CDBG program prior to 1993?

☒ Yes ☐ No

14. Has your community been involved with any other state or federal programs that required the reporting of specific fair housing information?

☒ Yes ☐ No

Dennis Kintigh, Mayor

Date

Residential Anti-Displacement and Relocation Assistance Plan

I. Background/Introduction

Section 104(d) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(d)(4)), Section 105(b)(16) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705(b)(16)), and implementing regulations at 24 CFR Part 42, specify that a grantee under the Community Development Block Grant (CDBG) must certify that it has in effect and is following a Residential Anti-Displacement and Relocation Assistance Plan (Plan). As a CDBG grantee, the City of Roswell must certify to the State of New Mexico Department of Finance and Administration Local Government Division that it has and is following such a Plan.

The Plan must include three components: 1) one-for-one replacement requirements for lower-income housing units, 2) relocation assistance, and 3) a description of the steps the City of Roswell will take to minimize displacement.

II. Activities Covered by the Plan

All activities involving the use of CDBG funds that cause displacement as a direct result of demolition or conversion of a lower-income dwelling are subject to the requirements specified in the Plan. Activities for which funds are first obligated on or after September 30, 1988 are subject to the requirements specified in the Plan, without regard to the source year of the funds.

III. Uniform Relocation Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) govern displacement that directly results from acquisition, rehabilitation, or demolition of real property when federal funds are used. The City of Roswell's Residential Anti-Displacement and Relocation Assistance Plan is in no way intended to supersede the URA. CDBG-assisted activities may still be subject to the requirements of the URA.

IV. One-for-One Replacement Units

All occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than as lower-income dwelling units in connection with an assisted activity must be replaced with comparable lower-income units. Replacement lower-income dwelling units may be provided by any governmental agency or private developer and must meet the following requirements:

- A. The units must be located within the City of Roswell to the extent feasible, the units shall be located within the same neighborhood as the units replaced.
- B. The units must be sufficient in number and size to house no fewer than the number of occupants who could have been housed in the units that are demolished or converted. The number of occupants who could have been housed in the units shall be in accordance with applicable local housing occupancy codes. The units may not be replaced with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units), unless the City of Roswell has provided information demonstrating that such a proposed replacement is consistent with the needs assessment contained State of New Mexico

Department of Finance and Administration Local Government Division HUD-approved Consolidated Plan.

- C. The units must be in standard condition and must at a minimum meet Section 8 Program Housing Quality Standards. Replacement lower-income units may include units brought from a substandard condition to standard condition if: 1) no person was displaced from the unit; and 2) the unit was vacant for at least 3 months before execution of the agreement between the City of Roswell and the property owner.
- D. The units must initially be made available for occupancy at any time during the period beginning one year before the recipient makes public the information required under Section F below and ending three years after the commencement of the demolition or rehabilitation related to the conversion.
- E. The units must be designed to remain lower-income dwelling units for at least 10 years from the date of initial occupancy. Replacement lower-income dwelling units may include, but are not limited to, public housing or existing housing receiving Section 8 project-based assistance.
- F. Before the City of Roswell enters into a contract committing it to provide CDBG funds for any activity that will directly result in the demolition of lower-income dwelling units or the conversion of lower-income dwelling units to another use, the City of Roswell must make the following information public and submit it in writing to LGD:
 - 1. A description of the proposed assisted activity;
 - 2. The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for lower-income dwelling units as a direct result of the assisted activity;
 - 3. A time schedule for the commencement and completion of the demolition or conversion;
 - 4. The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units. If such data is not available at the time of the submission to LGD, the submission shall identify the general location on an area map and the approximate number of dwelling units by size, and information identifying the specific location and number of dwellings units by size shall be submitted and disclosed to the public as soon as it is available;
 - 5. The source of funding and time schedule for the provision of replacement dwelling units;
 - 6. The basis for concluding that each replacement unit will remain a lower-income dwelling unit for at least 10 years from the date of initial occupancy; and
 - 7. Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units is consistent with the needs assessment contained in the State of New Mexico Department of Finance and Administration Local Government Division Consolidated Plan.
- G. The one-for-one replacement requirements may not apply if HUD determines, based on objective data, that there is an adequate supply of vacant lower-income dwelling units in standard condition available on a non-discriminatory basis within the City of Roswell. In making such a determination, LGD will consider such factors as vacancy rates,

numbers of lower-income units in the City of Roswell, and the number of eligible families on the Section 8 waiting list.

V. Relocation Assistance

Each lower income person who is displaced as a direct result of CDBG assisted demolition or conversion of a lower-income dwelling shall be provided with relocation assistance.

Relocation assistance includes advisory services and reimbursement for moving expenses, security deposits, credit checks, other moving expenses, including certain interim living costs, and certain replacement housing assistance.

Displaced persons have the right to elect, as an alternative to the benefits described in this Plan, to receive benefits under the URA, if they determine that it is in their best interest to do so. The following relocation assistance shall be available to lower-income displacement persons:

- A. Displaced lower-income persons will receive the relocation assistance required under 49 CFR 24, Subpart C (General Relocation Requirements) and Subpart D (Payment for Moving and Related Expenses) whether the person elects to receive assistance under the URA or the assistance required by CDBG regulations. Relocation notices must be distributed to the affected persons in accordance with 49 CFR 24.203 of the URA;
- B. The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit and for credit checks required to rent or purchase the replacement dwelling unit;
- C. Actual reasonable out-of-pocket costs incurred in connection with temporary relocation, including moving expenses and increased housing costs, if:
 - 1. The person must relocate temporarily because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the person or the public; or
 - 2. The person is displaced from a lower-income dwelling unit, none of the comparable replacement units to which the person has been referred qualifies as a lower-income dwelling unit, and a suitable lower-income dwelling unit is scheduled to become available through one-for-one replacement requirements.
- D. Replacement Housing Assistance. Displaced persons are eligible to receive one of the following two forms of replacement housing assistance:
 - 1. Each person shall be offered rental assistance equal to 60 times the amount necessary to reduce the monthly rent and estimated average monthly cost of utilities for a replacement dwelling to the "Total Tenant Payment," as determined under 24 CFR 813.107. All or a portion of this assistance may be offered through a certificate or housing voucher for rental assistance under the Section 8 program. Where Section 8 assistance is provided to the displaced person, the City of Roswell must provide the person with referrals to comparable units whose owners are willing to participate in Section 8 program to the extent that cash assistance is provided, it will be provided in installments.

2. In lieu of the housing voucher, certificate or cash assistance described above, the person may elect to receive a lump sum payment allowing them to secure participation in a housing cooperative or mutual housing association. This lump sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting the "Total Tenant Payment," as determined under 24 CFR 813.107, from the monthly cost of rent and average monthly cost of utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings in a federally-insured financial institution conducting business within the City of Roswell.

Displaced lower-income tenants shall be advised of their right to elect relocation assistance pursuant to the URA and the regulations at 49 CFR 24 as an alternative to the relocation assistance available under CDBG regulations.

VI. Eligibility for Relocation Assistance

A lower-income person is eligible for relocation assistance if they are considered to be a "displaced person" as defined in 24 CFR 42.305. A displaced person means a lower-income person who, in connection with an activity assisted under the CDBG program, permanently moves from real property or permanently moves personal property from real property as a direct result of demolition or conversion of a lower-income dwelling.

For purposes of this definition, a permanent move includes a move made permanently and:

- A. After notice by the owner to move from the property, if the move occurs on or after the date of the submission of a request to the City of Roswell for CDBG assistance that is later approved for the requested activity; or
- B. After notice by the owner to move from the property, if the move occurs on or after the date of the initial official submission to HUD of the consolidated plan under 24 CFR Part 91 describing the assisted activity; or
- C. Before the dates described in A & B above, if the City of Roswell or LGD determines that the displacement was a direct result of conversion or demolition in connection with a CDBG assisted activity; or
- D. By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:
 1. The tenant moves after execution of the CDBG agreement covering the acquisition, rehabilitation or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions, including a monthly rent and estimated average monthly utility costs that do not exceed the greater of the tenant's monthly rent before such agreement, or the total tenant payment as determined under 24 CFR 813.107 if the tenant is lower-income, or 30 percent of gross household income if the tenant is not lower-income.

2. The tenant is required to relocate temporarily, does not return to the building/complex, and either is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or other conditions of the temporary relocation are not reasonable.
3. The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

If the displacement occurs on or after the appropriate date described in A & B above, the lower-income person is not eligible for relocation assistance if:

- A. The person is evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, State or local law, or other good cause, and the City of Roswell determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;
- B. The person moved into the property on or after the date described in A & B above after receiving written notice of the expected displacement; or
- C. The City of Roswell determines that the displacement was not a direct result of the CDBG assisted activity and LGD concurs with this determination.

VII. Minimizing Displacement

The CDBG regulations regarding the demolition or conversion of lower-income dwelling units are designed to ensure that lower-income persons are provided with adequate, affordable replacement housing. Naturally, involuntary displacement should be discouraged whenever a reasonable alternative exists. Involuntary displacement is extremely disruptive and disturbing, especially to lower-income persons who do not have the means to locate alternative housing.

There are various ways that displacement can be minimized. The following are steps that will be taken to minimize the involuntary displacement of lower-income persons when CDBG funds are involved:

- A. Screening of Applications. All CDBG applications will be reviewed to determine whether involuntary displacement is likely to occur. Those applications involving displacement will receive a lower priority recommendation for funding unless it can be shown that alternatives are not available.
- B. Acquisition of Property. Applicants who apply for CDBG funds to acquire property for the development of lower-income housing will be encouraged to purchase vacant land. In the case of in-fill and other projects where this is not feasible and the project involves potential displacement, the applicant shall agree to allow the displaced lower-income person(s) to occupy the new housing at an affordable rent.

Applicants who utilize CDBG funds to rehabilitate or convert a lower-income unit to a nonresidential use will be required to supply replacement housing consistent with paragraph IV, as well as relocation assistance.

- C. Cost of Relocation Assistance. The cost of any required relocation assistance and the provision of replacement housing will be borne by the applicant and may be paid for out of CDBG funds awarded to the project.

VIII. Definitions

- A. "Comparable replacement dwelling unit" means a dwelling unit that:
1. Meets the criteria of 49 CFR 24.2(d)(1) through (6); and
 2. Is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed the "Total Tenant Payment" determined under 24 CFR 813.107 after taking into account any rental assistance the household would receive.
- B. "Lower-income dwelling unit" means a dwelling unit with a market rental (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing and moderate rehabilitation established under 24 CFR Part 888.
- C. "Standard condition" means units that at a minimum meet the Existing Housing Quality Standards of the Section 8 rental subsidy program.
- D. "Substandard condition suitable for rehabilitation" means units with code violations that can be brought to Section 8 Housing Quality Standards within reasonable monetary amounts.
- E. "Vacant occupiable dwelling unit" means a dwelling unit that is in a standard condition; a vacant dwelling unit that is in substandard condition, but is suitable for rehabilitation; or a dwelling unit in any condition that has been occupied (except by a squatter) at any time within the period beginning 3 months before the date of execution of the agreement by the City of Roswell covering the rehabilitation or demolition.

IX. Grievances

The City of Roswell will provide timely written answers to written complaints and grievances within 15 working days where practical. Action items:

- A. Adopt complaint handling procedures or policies to insure that complaints or grievances are responded to within 15 days, if possible.
- B. Allow for appeal of a decision to a neutral authority.
- C. File a detailed record of all complaints or grievances and responses in one central location with easy public access.

X. Certification

The City of Roswell herewith certifies to follow the Residential Anti-Displacement and Relocation Assistance Plan described above and adopt the plan by resolution annually.

Plan Adoption Date: March 10, 2016

Adoption Instrument: Approval through Resolution by the Mayor and City Council

Dennis Kintigh, Mayor

Date

Section 3 Plan

The City of Roswell is committed to comply with Section 3 of the Housing and Urban Development Act of 1968. This Act encourages the use of small local businesses and the hiring of low income residents of the community.

The City of Roswell has appointed Jetta Miles as the Section 3 Coordinator, to advise and assist key personnel and staff on Section 3, to officially serve as focal point for Section 3 complaints, and as the on-site monitor of prime contractors and sub-contractors to insure the implementation and enforcement of their Section 3 plans. The approval or disapproval of the Section 3 plan is the ultimate responsibility of the City of Roswell. Documentation of efforts will be retained on file for monitoring by the state.

Therefore, the City of Roswell shall:

1. Hiring

- a. Advertise for all City positions in local newspapers.
- b. List all City job opportunities with the State Employment Service.
- c. Give preference in hiring to lower income persons residing in the City. This means that if two equally qualified persons apply and one is a resident of the City and one is not, the resident will be hired.
- d. Maintain records of City hiring as specified on this form.

ANTICIPATED HIRING 2016				
PLANNED			ACTUAL	
Job Classification	# of Positions to be Filled	# of Positions to be Filled by Lower Income City Residents	# of Positions Filled	# of Positions Filled by Lower Income City Residents

*Chart for Section 3 Plan MUST be filled out in its entirety.

2. Contracting

- a. The City of Roswell will compile a list of businesses, suppliers, and contractors located in the City of Roswell.
- b. These vendors will be contacted for bid or quotes whenever the City of Roswell requires supplies, services or construction.
- c. Preference will be given to small local businesses. This means if identical bids/quotes are received from a small business located within the City of Roswell and one from outside the City of Roswell, the contract will be awarded to the business located within the community.

3. Training

- a. The City of Roswell shall maintain a list of all training programs operated by the City of Roswell and its agencies and will direct them to give preference to City of Roswell

residents. The City of Roswell will also direct all CDBG-sponsored training to provide preference to City of Roswell residents.

4. CDBG Contracts: All CDBG bid proposals and contracts shall include the following language.
 - a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 170. Section 3 requires that the greatest extent feasible, opportunities for training and employment be given lower income residents of the project areas, and contracts for work in connection with the project be awarded to business concerns residing in the project area.
 - b. The parties to this contract will comply with the provision of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR and all applicable rules and orders of the Department issued there under prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
 - c. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under the Section 3 clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
 - d. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135, and will not let any subcontract unless the subcontractor has first provided it with the requirements of these regulations.
 - e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department, issued there under prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.

The City of Roswell shall require each contractor to prepare a written Section 3 plan as a part of their bids on all jobs exceeding \$100,000. All Section 3 plans shall be reviewed and approved by the City of Roswell's Equal Opportunity Section 3 Compliance Officer and retained for monitoring by the state.

The City of Roswell will maintain all necessary reports and will insure that all contractors and subcontractors submit required reports.

LOWER INCOME CLARIFICATION

A family who resides in the City of Roswell and whose income does not exceed the income limit for the size of family as per the attached Section 8 Income Limit for the City of Roswell. Information contained in our Section 3 Plan reflects the status of the City of Roswell employees regarding lower income considerations based on their salary paid by the City of Roswell.

Dennis Kintigh, Mayor

Date

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 17.

Meeting Date: 03/10/2016

COMMITTEE: Infrastructure

CONTACT: Louis Najar

CHAIR: Jeanine Corn-Best

ACTION REQUESTED:

Resolution 16-15 - Request approval of Resolution 16-15 the participation in the Capital Outlay Program administered by the New Mexico Department of Transportation (appropriation of \$200,000). (Best/Morris)

BACKGROUND:

Resolution 16-15 is administrative support for Capital Outlay Appropriation 12-1503. This is 2012 Capital Outlay Appropriation for \$200,000 which the city earmarked for 9th Street and Roswell Convention Center parking. This Resolution is necessary to complete the reimbursement process.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

This is \$200,000 legislative grant.

LEGAL REVIEW:

No additional review required.

BOARD AND COMMITTEE ACTION:

Infrastructure Committee approved this item at their meeting on February 16, 2016.

STAFF RECOMMENDATION:

City Council consideration of Resolution 16-15 as presented.

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 18.

Meeting Date: 03/10/2016

COMMITTEE: Infrastructure

CONTACT: Louis Najar

CHAIR: Jeanine Corn-Best

ACTION REQUESTED:

Resolution 16-16 - Request approval of Resolution 16-16 the participation in the Capital Outlay Program administered by the New Mexico Department of Transportation (appropriation of \$325,000). (Best/Morris)

BACKGROUND:

Resolution 16-16 is administrative support for Capital Outlay Appropriation 13-1830. This is 2013 Capital Outlay Appropriation for \$325,000 which the city earmarked for Union and Montana Streets widening to four lanes. This Resolution is necessary to complete the reimbursement process.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

This is \$325,000 legislative grant.

LEGAL REVIEW:

No additional review required.

BOARD AND COMMITTEE ACTION:

Infrastructure Committee approved this item at their meeting on February 16, 2016.

STAFF RECOMMENDATION:

City Council consideration of Resolution 16-16 as presented.

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 19.

Meeting Date: 03/10/2016

COMMITTEE: Finance

CONTACT: Monica Garcia

CHAIR: Caleb Grant

ACTION REQUESTED:

Resolution 16-20 - Request approval of Resolution 16-20 a budget amendment for Cell #4 at the Landfill for applicable Gross Receipts Tax in the amount of \$107,938.02. (Grant/Garcia)

BACKGROUND:

The City Council at their April 2015 meeting, approved a budget amendment for construction of cell #4 at the City's landfill. The gross receipts taxes of \$107,938 were not included in the purchase order for the project.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

Solid Waste - Landfill

- Capital Outlay / Improvements.

LEGAL REVIEW:

Not applicable.

BOARD AND COMMITTEE ACTION:

The Finance Committee recommended Resolution 16-20 at their meeting on March 3, 2016.

STAFF RECOMMENDATION:

City Council consideration of Resolution 16-20 as presented.

Attachments

Resolution 16-20

RESOLUTION NO. 16-20

A RESOLUTION OF THE CITY OF ROSWELL, NEW MEXICO AMENDING THE BUDGET FOR THE CITY OF ROSWELL FOR THE FISCAL YEAR ENDING JUNE 30, 2016.

WHEREAS, the governing body of the City of Roswell, State of New Mexico, has previously developed a budget for the fiscal year 2015-2016, ending June 30, 2016; and

WHEREAS, the City desires to amend said budget for the Gross Receipts Tax for Cell #4 at the city landfill in the amount of \$107,938 from Solid Waste Fund reserves; and

WHEREAS, the City Council at April 2015 meeting approved a budget amendment for the construction of cell #4 at the City's landfill facility; and

WHEREAS, it is the majority opinion of the Governing Body that the proposed amended budget continues to meet fiscal requirements as currently determined for fiscal year 2016.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL, THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO hereby adopts the budget adjustment hereinabove described and respectfully requests approval for same from the Local Government Division of the Department of Finance and Administration, State of New Mexico.

PASSED, ADOPTED, SIGNED AND APPROVED this 10th day of March, 2016.

Dennis Kintigh, Mayor

CITY SEAL

ATTEST:

Sharon Coll, City Clerk

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 20.

Meeting Date: 03/10/2016

COMMITTEE: Finance

CONTACT: Monica Garcia

CHAIR: Caleb Grant

ACTION REQUESTED:

Resolution 16-21 - Request approval of Resolution 16-21 a budget amendment for UFO Festival in the amount of \$80,000. (Grant/Garcia)

BACKGROUND:

The City Council at the February 11, 2016 meeting approved funding in amount \$80,000 for the UFO Festival.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

Lodgers' Tax Reserves

- Lodger' Tax – Special Events / UFO.

LEGAL REVIEW:

Not applicable.

BOARD AND COMMITTEE ACTION:

The Finance Committee recommended Resolution 16-21 at their meeting on March 3, 2016.

STAFF RECOMMENDATION:

City Council consideration of Resolution 16-21 as presented.

Attachments

Resolution 16-21

RESOLUTION NO. 16-21

A RESOLUTION OF THE CITY OF ROSWELL, NEW MEXICO AMENDING THE BUDGET FOR THE CITY OF ROSWELL FOR THE FISCAL YEAR ENDING JUNE 30, 2016.

WHEREAS, the governing body of the City of Roswell, State of New Mexico, has previously developed a budget for the fiscal year 2015-2016, ending June 30, 2016; and

WHEREAS, the City desires to amend said budget for the 2016 UFO Festival in the amount of \$80,000 from the Lodger's Tax Fund; and

WHEREAS, the City Council at their February 2016 meeting approved funding for the event; and

WHEREAS, it is the majority opinion of the Governing Body that the proposed amended budget continues to meet fiscal requirements as currently determined for fiscal year 2016.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL, THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO hereby adopts the budget adjustment hereinabove described and respectfully requests approval for same from the Local Government Division of the Department of Finance and Administration, State of New Mexico.

PASSED, ADOPTED, SIGNED AND APPROVED this 10th day of March, 2016.

Dennis Kintigh, Mayor

CITY SEAL

ATTEST:

Sharon Coll, City Clerk

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 21.

Meeting Date: 03/10/2016

COMMITTEE: Finance

CONTACT: Monica Garcia

CHAIR: Caleb Grant

ACTION REQUESTED:

Resolution 16-22 – Request approval of Resolution 16-22 a mid-year budget amendment for FY2016..
(Grant/Garcia)

BACKGROUND:

As part of our efforts to reduce expenditures in response to our current \$1.4 million decrease in gross receipts tax income, a number of budgeted project and capital related items totaling \$832,000 have been identified for removal from the budget. Staff will present these items to Council at your meeting and expand upon each in terms of content and impact. Staff is also completing a review of potential line item operating reductions. While our current shortfall is approximately \$1.4 million, we are planning for \$1.8 to \$1.9 million in anticipation for what might still occur prior to the end of this fiscal year (June 30th).

FINANCIAL CONSIDERATION (See Fiscal Impact below)

See Exhibit A.

LEGAL REVIEW:

Not applicable.

BOARD AND COMMITTEE ACTION:

The Finance Committee recommended Resolution 16-22 at their meeting on March 3, 2016.

STAFF RECOMMENDATION:

City Council consideration of Resolution 16-22 as presented.

Attachments

Resolution 16-22

Exhibit A

RESOLUTION NO. 16-22

A RESOLUTION OF THE CITY OF ROSWELL, NEW MEXICO APPROVING CERTAIN BUDGET LINE ITEM CHANGES FOR THE CITY OF ROSWELL FOR THE FISCAL YEAR ENDING JUNE 30, 2016

WHEREAS, the approved budget for the City of Roswell, State of New Mexico, for the fiscal year 2015-2016, ending June 30, 2016, reflects certain estimated projections of revenues and expenditures, and

WHEREAS, the City Council of Roswell, Chaves County, New Mexico, has determined that certain line item changes are necessary in various funds as identified on Exhibit A attached hereto

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL, THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO

1. That the proposed budget line items of said funds are approved, ratified and confirmed for intents and purposes as bona fide and valid changes in said budget of the City; subject, however to authorization and approval of the Local Government Division of the Department of Finance and Administration.
2. That request is hereby authorized and made to say Local Government Division to approve the aforesaid changes and transfers of funds as reflected by the adjusted budget line items of the fiscal year 2016 budget of the City of Roswell

PASSED, ADOPTED, SIGNED AND APPROVED this 10th day of March, 2016.

Dennis Kintigh, Mayor

CITY SEAL

ATTEST:

Sharon Coll, City Clerk

Exhibit A

Expense

IT Infrastructure	101-4631-463-7503	(80,000)
IT Equipment	101-4631-463-7505	(115,000)
Clean & Safe Program	101-4151-413-2421	(100,000)
Crack Seal Program	223-4323-432-4114	(50,000)
Crime Analyst Position	101-4111-411-1110 etc	(29,592)
Playground Replacements	101-4231-423-7504	(79,000)
Code Enforcement Software	101-4151-413-7505	(50,000)
Zoo Infrastructure	101-4232-423-7504	(50,000)
Pavement Condition Study	223-4323-432-4001	(150,000)
Pool Inflatable	215-4242-424-7505	(12,000)
Museum Lighting	101-4221-422-7505	(33,000)
Parks Water Utility	101-4231-423-6304	(50,000)
Vector Control	101-4041-404-5307	(33,775)

(832,367)

Vector Control	630-4351-435-5307	33,775
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Revenue

Transfer from General - Streets	223-0000-381-1000	(200,000)
	101-0000-382-1200	200,000
Transfer from General - Recreation	215-0000-381-1000	(12,000)
	101-0000-382-4500	12,000
Transfer from Park Purchase	101-0000-242-0100	50,000
Reserve account		

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 22.

Meeting Date: 03/10/2016

COMMITTEE: N/A

CONTACT: Sharon Coll

CHAIR: N/A

ACTION REQUESTED:

Request approval of the following appointments as recommended by Mayor Kintigh. (Sandoval/Mayor Kintigh)

- Chief of Police - Philip Smith
- City Treasurer - Monica Garcia
- City Clerk - Sharon Coll

BACKGROUND:

Traditionally, after the Municipal Election the appointments of the Chief of Police, City Treasurer and the City Clerk take place at the organizational meeting.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

Not applicable.

LEGAL REVIEW:

Not applicable.

BOARD AND COMMITTEE ACTION:

Not applicable.

STAFF RECOMMENDATION:

City Council consideration of the following appointments recommended by Mayor Kintigh.

- Chief of Police - Philip Smith
 - City Treasurer - Monica Garcia
 - City Clerk - Sharon Coll
-

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 23.

Meeting Date: 03/10/2016

COMMITTEE: N/A

CONTACT: Sharon Coll

CHAIR: N/A

ACTION REQUESTED:

Election of Mayor Pro Tem. (Sandoval/Mayor Kintigh)

BACKGROUND:

The governing body must hold an organizational meeting as per NMSA 1978 3-8-33H after a Municipal Election.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

Not applicable.

LEGAL REVIEW:

Not applicable.

BOARD AND COMMITTEE ACTION:

Not applicable.

STAFF RECOMMENDATION:

City Council consideration to elect a pro tem.

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 24.

Meeting Date: 03/10/2016

COMMITTEE: Legal

CONTACT: William Zarr

CHAIR: Jason Perry

ACTION REQUESTED:

Proposed Ordinance 16-06 - Request to advertise for a public hearing on Proposed Ordinance 16-06 - Cable One Franchise. (Perry/Zarr)

BACKGROUND:

Proposed Ordinance No. 16-06 provides for the grant of a Franchise agreement with Cable One, Inc. (Franchisee) that will continue to allow the Franchisee to utilize the City's right of way to build and maintain a cable system in order to provide cable services within the City.

Cable One, Inc., and its predecessors in interest have operated a cable system in the City of Roswell pursuant to various franchises granted under City Ordinance Numbers 995, 1057, 1116, 1184. It currently operates under City Ordinance Number 04-04 - which expired on January 1, 2015, but the terms of which the parties have continued to honor and operate under.

The proposed Franchise would expire on January 1, 2026. The terms of the proposed Franchise are substantially similar to the terms of the present franchise under Ordinance 04-04. The Franchisee will continue to pay a franchise fee in the amount of 5% of its gross revenues from cable services. This does not include internet or telephony services which do not fall under the definition of cable services under federal law. Payments are to be made quarterly, and the City has the right to audit. The Franchise will continue to provide one channel for PEG (Public, Education and Government) use.

The Franchise provides detailed provisions on transfers by the Franchisee; conditions on the use of property; construction standards; general system design; system facilities, equipment and services; interconnectivity; PEG channel use; inspection of books and records relative to compliance; insurance, surety and indemnification; performance guarantees; and various remedies for violation of the Franchise agreement.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

Under the franchise agreement, Cable One pays a franchise fee of 5% of its gross revenues from cable services. Franchise fee revenues paid for fiscal years 2013-2015 years are as follows:

- FY 2013 \$ 271,999
- FY 2014 \$ 249,107
- FY 2015 \$ 222,225

The FY 2016 budget includes anticipated revenue of \$220,000.

LEGAL REVIEW:

The City Attorney has reviewed Proposed Ordinance 16-06.

BOARD AND COMMITTEE ACTION:

The Legal Committee recommended advertising Proposed Ordinance 16-06 at their meeting held on February 25, 2016.

STAFF RECOMMENDATION:

City Council consideration of authorization to advertise a public hearing on Proposed Ordinance 16-06.

Attachments

Proposed Ordinance 16-06 Cableone Franchise

PROPOSED ORDINANCE 16-06

GRANTING A CABLE FRANCHISE TO CABLE ONE, INC. ("CABLE ONE, INC") FOR CONSTRUCTION, OPERATION, AND MAINTENANCE OF A CABLE SYSTEM IN THE PUBLIC RIGHTS-OF-WAY WITHIN THE FRANCHISE AREA, FOR THE PURPOSE OF PROVIDING CABLE SERVICE; ESTABLISHING THE TERMS AND CONDITIONS OF THE FRANCHISE; ESTABLISHING CERTAIN REMEDIES FOR THE VIOLATION OF THE FRANCHISE; ~~REPEALING CITY ORDINANCES 995, 1057, 1116, and 1184.~~

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ROSWELL:

Section 1

THE CITY COUNCIL HEREBY FINDS:

(A) CABLE ONE, INC. submitted a request pursuant to 47 U.S.C. §546 for a renewal franchise to construct, upgrade, operate and repair a cable system in the City of ROSWELL and to provide Cable Service within the City.

(B) The City has conducted hearings to identify the future cable-related needs and interests of the community; to consider the financial, technical, and legal qualifications of CABLE ONE, INC; and to determine whether CABLE ONE, INC's plans for upgrading and operating its system are adequate.

(C) The City has relied on CABLE ONE, INC's written representations and has considered all information CABLE ONE, INC has presented to it.

(D) The Roswell City Council, having considered the interests proposed and advanced, has found that the grant of the renewal franchise requested, subject to conditions, is in the public interest.

(E) CABLE ONE, INC is willing to accept unconditionally the conditions of the renewal franchise grant as stated herein.

(F) The ROSWELL City Council held a public hearing on the proposed franchise renewal conditions on the 14th day of July, 2015, after providing legal notice of the hearing, as required by law.

(G) Pursuant to Section 3-42-1, et. seq., NMSA 1978, as amended from time to time, the City Council hereby grants a cable franchise renewal to CABLE ONE, INC as follows:

Section 2. DEFINITIONS.

References to any City official or City office also refer to any official or office that succeeds to any or all of the responsibilities of the named official, whether by succession or otherwise. In addition, the following definitions shall apply:

ACCESS, PEG ACCESS, OR PEG USE. The availability of selected Cable System channels or open video system channels for non-commercial public, education or government use including institutional network use by various eligible agencies, institutions, organizations, groups, and

individuals, including the City and its designated access providers, to acquire, create, and distribute programming not under a Grantee's editorial control (except as required by applicable law) for which the Cable System will have no legal liability, including, but not limited to:

(1) Public Access or Public Use. Non-commercial access where organizations, groups, or individual members of the general public are the primary or designated programmers or users having editorial control over their programming.

(2) Education Access or Education Use. Non-commercial access where accredited schools are the primary or designated programmers or users having editorial control over their programming.

(3) Government Access or Government Use. Non-commercial access where government institutions or their designees are the primary or designated programmers or users having editorial control over their programming

AFFILIATE. A person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership with another person.

CABLE MODEM SERVICE. A two-way activated system that provides access to the internet and data transmission at speeds at least as great as 200 kilobits per second.

CABLE ORDINANCE, ORDINANCE or FRANCHISE. This ordinance and any amendments, exhibits or appendices hereto.

CABLE SERVICE. The one-way transmission to Subscribers of (i) video programming, or (ii) other programming service; and the Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, **but does not include telephony or internet services, the latter which includes cable modem service.**

CABLE SYSTEM. A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include:

(1) a facility that serves only to retransmit the television signals of one or more television broadcast stations;

(2) a facility that serves Subscribers without using, or connecting to a facility that uses, any public Right-of-Way within the City;

(3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II (Common Carriers) of the Federal Communications Act of 1934, as amended, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(4) any facilities of any electric utility used solely for operating its electric utility systems; or (5) an OVS that is certified by the Federal Communications Commission (FCC).

CITY. The City of Roswell; except that, when used to describe a geographic area, the term refers to the boundaries of the City of Roswell, New Mexico, as they exist now or may exist in the future via annexation or consolidation.

DESIGNATED ACCESS PROVIDER. An eligible entity or entities designated by the City to manage some or all of the PEG channels, facilities and equipment.

FRANCHISE AREA. All parts of the City now existing or hereafter annexed.

FRANCHISEE. CABLE ONE, INC., and its lawful and permitted successors, assigns and transferees.

GROSS REVENUE. Gross Revenue shall mean and include: Any and all revenue of Franchisee, of any kind, nature or form derived from the operation of a Cable System to provide Cable Service. Gross Revenues shall be interpreted consistent with FCC regulations and rulings and include, by way of example and not limitation, revenues from equipment sales and rentals, services (including Cable Modem Services, if such services are determined by statute, the FCC, or the judiciary to be a Cable Service), installation, late fees and other Subscriber charges, advertising and shopping services. The term includes revenues that are received now, as well as new revenue sources from delivery of Cable Service that may develop in the future; but it does not extend to amounts received by Franchisee as a tax, fee (including franchise fee) or assessment of general applicability collected by Franchisee for pass-through to a governmental agency or reimbursement from third parties for expenses, nor to bad debt or to refunds or credits issued. The term shall be construed to include revenues of Franchisee's Affiliates (other than those revenues which are already treated as the revenues of the Franchisee upon which a fee is paid), only to the extent necessary to prevent avoidance of fees owed on Franchisee's Gross Revenues from the delivery of Cable Service. Cable System revenues shall be as defined by GAAP.

PEG CHANNEL. Any capacity on the cable system set aside by Franchisee for PEG (public, education, or government) use.

PUBLIC RIGHTS OF WAY. The surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, or right of way or easement dedicated to compatible uses, now or hereafter existing within the City which may be properly used for the purpose of installing, maintaining, and operating a Cable System; and any other property that Franchisee is entitled by state or federal law to use by virtue of the grant of this Franchise.

STANDARD DROP. An aerial connection extending no more than 150 feet from the potential subscriber's demarcation point to the nearest point of distribution on the cable system from which Cable Service can be provided to that subscriber.

SUBSCRIBER. The City or any person who lawfully is receiving Cable Service from a Franchisee and does not further distribute such service.

SUBSCRIBER NETWORK. The fibers, coaxial cables and the electronic devices and other components that are primarily used in the provision of Cable Service to residential subscribers.

Section 3. GRANT OF FRANCHISE; LIMITS AND RESERVATIONS.

(A) Grant, term and effective date.

(1) A Cable Franchise is hereby granted to Franchisee, subject to the conditions set forth in this Franchise. This Franchise grants the right, subject to conditions, to construct, upgrade, operate, maintain and repair a Cable System (including I-NET facilities) in, over, along and under City Rights-of-Way for the purpose of providing Cable Service and for PEG use of the Cable System, commencing on the effective date of the Franchise through and including January 1, **2025**, unless terminated prior to that date in accordance with this Franchise or applicable law.

(2) The grant shall become effective thirty (30) days after second reading and final passage of this Ordinance except as provided in Section 3(A)(3).

(3) The grant shall not become effective unless and until Franchisee has:

(a) Filed an unconditional acceptance of the grant made by this Ordinance substantially in the form in Exhibit A and;

(b) Made all payments, posted all securities and guarantees, and supplied all information that it is required to supply prior to or upon the effective date of the Franchise. If Franchisee fails to satisfy these obligations within thirty (30) days of the effective date of this Ordinance, the Franchise grant shall be deemed rescinded.

(B) Relation to other provisions of law.

(1) The Franchise issued by the City is subject to applicable federal and state law. References to laws or "applicable laws" in this Franchise include federal, state and local laws (and regulations lawfully adopted pursuant to those laws) now in effect, and to amended or new federal and state laws lawfully enacted. This Franchise does not confer rights upon the Franchisee other than as expressly provided herein, nor pass rights by implication except those that may otherwise vest pursuant to governing law. The Franchise does not convey title, equitable or legal, in the Public Rights-of-Way or public property. Franchisee shall not subdivide or sublease to any other person or affiliate any right granted to Franchisee herein, shall provide Cable Service complying with all the conditions of this Franchise throughout the Franchise term, and shall, subject to Franchisee's reasonable terms and conditions, make any Cable Service it provides over its Cable System available without unlawful discrimination to Subscribers in its Franchise Area.

(2) This Franchise and all rights granted under the Franchise are subject to the lawful and non-discriminatory exercise of the police powers the City now has or may later obtain, including but not limited to the power of eminent domain; and are further subject to the exercise of the City's rights as a property owner under state and federal laws. Except as expressly set forth herein, neither the granting of this Franchise or any provision herein shall constitute a waiver or bar to the exercise of any governmental right or power of the City, including without limitation the right of eminent domain, and the right to grant additional cable franchises. However, once effective, this Franchise is a contract and except as to those changes which are the result of the City's lawful and necessary exercise of police powers, neither party may take any unilateral action which changes the explicit mutual promises. This Franchise shall not be construed as any limitation upon the right of the City to grant to other persons or entities rights, privileges and authority similar to the rights, privileges and authority granted to Franchisee.

(3) The Franchise shall be interpreted to convey rights and interests only as to those City Rights-of-Way and easements in which the City has an actual interest and only to the extent and for the purposes set out in the Franchise or available pursuant to governing law. The City acknowledges that the grant of access to the City Rights of Way is an essential element of consideration for this Franchise.

(4) The Franchise issued and the franchise fee paid hereunder are not in lieu of any other required generally applicable permit, authorization, fee, charge or tax. Without limiting the foregoing, the City, among other things, does not waive the requirements of, or the Franchisee's duty to obtain, all applicable permits, and to comply with the conditions thereof; to comply with zoning laws; or to comply with any generally applicable codes, ordinances and regulations governing the construction of the cable system.

(C) Interpretation and conflicts. This Franchise authorizes only the provision of Cable Service. This Franchise does not eliminate any obligation of the Franchisee to obtain other authorizations as lawfully may be required. Nothing in this section is intended to expand or contract the City's rights to regulate non-cable services as those rights may exist under governing law.

(D) Affiliates must comply. Any Affiliate or joint venture or partner of the Franchisee involved

in the management or operation of the Cable System in the City that would constitute a cable operator of the Cable System is subject to the limitations of, and shall comply with the terms and conditions of the franchise. The Franchisee shall be fully liable for any act or omission of an affiliate that controls the Franchisee or is responsible in any manner for the management of the Cable System that results in a breach of this Franchise, as if the act or omission was the Franchisee's act or omission.

(E) Relation to prior franchise. As of the effective date of this Franchise, with the exception noted in the following sentence, the rights granted under Roswell City Ordinances No. 995, 1057, 1116, and 1184 are superseded and of no further force and effect. Subject to any applicable statute of limitations, nothing in this paragraph shall be deemed to release the Franchisee from any liability arising under the prior franchise during the time it was in effect except that former rights applicable to such liabilities shall continue to apply. Franchisee shall provide proof satisfactory to the City that it will continue to provide the same or greater indemnity required under the prior franchise, and that it continues to maintain adequate insurance for injuries to persons or property that may have occurred during the prior franchise term.

(F) Validity. Both parties waive any claim or defense that any provision of this Franchise as it existed on the date the Franchise was signed, is unenforceable or otherwise invalid or void. Neither party waives the right to challenge the validity of any other applicable law.

(G) Effect of franchise acceptance. By accepting this renewal Franchise, the Franchisee:

- (1) Acknowledges and accepts the City's legal right to issue and enforce the Franchise;
- (2) Accepts and agrees to comply with each and every provision of this Franchise;
- (3) Agrees that it will not oppose intervention in any legal action that directly affects the City's rights under the Franchise;

(4) Agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

(H) Franchisee bears its own costs. Unless otherwise expressly provided in this Franchise all acts that the Franchisee is required to perform under this Franchise shall be performed at its own expense. This provision is not intended to limit any right the Franchisee may have to pass through to Subscribers or other third parties Franchise related or other costs incurred in exercising rights and obligations under this Franchise.

(I) No waiver.

(1) The failure of either party, upon one or more occasions, to exercise a right or to require compliance or performance under this Franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing; no course of dealing between a Franchisee and the City shall operate as a waiver of any such rights.

(2) A waiver of one right shall not be deemed a waiver of any other right, similar or dissimilar.

(J) No recourse. Without limiting such immunities as the City or other persons may have under applicable law, Franchisee shall have no monetary recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of this Franchise or because of the enforcement of this Franchise or other applicable law, unless the same shall be caused by criminal acts or by willful or gross negligence.

(K) Effect of change in law. In the event that state or federal laws, rules, or regulations preempt a

provision or limit the enforceability of a provision of this franchise, then the provision shall be read to be preempted or limited to the extent and for the time, but only to the extent and for the time, that such laws, rules or regulations validly acted to preempt or limit such provision. In the event such state or federal law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed, so that the provision hereof that had been preempted or limited is no longer so affected, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the affected party.

Section 4. TRANSFERS.

(A) No transfer without City approval. Franchisee agrees that the rights granted to it by the City are personal in nature and held in trust. No transfer may occur without the prior consent of the City. The City need not consider an application for a transfer until Franchisee has filed all information required under applicable law.

(B) No transfer of a Franchise, Franchisee, or Cable System or of control over the same (including, but not limited to, transfer by forced or voluntary sale, merger, consolidation, receivership, or any other means) shall occur unless prior application is made by the Franchisee to City and City's prior written consent is obtained, pursuant to this Section of the Franchise, and only then upon such terms and conditions, pursuant to law, the City reasonably deems necessary and proper to protect the public interest. City will not unreasonably withhold consent to a requested transfer. Transfer applications shall be deemed to be held in trust, and to be personal to the Franchisee. Any transfer that is made without the prior approval of City shall be without affect. The granting of approval for a transfer in one instance shall not render unnecessary approval of any subsequent transfer. An application for a transfer must be submitted at least 120 days prior to the date the transaction is scheduled to be consummated. If the City does not act upon an application for transfer within 120 days, it shall be deemed approved.

(C) A change of control of the Franchise, Franchisee, or Cable System shall be deemed to have occurred whenever there is a change, acquisition or transfer of control of more than a twenty five percent (25%) ownership in the Franchisee or its direct or indirect parents by any person, or a group of persons acting in concert who did not prior to the time of such change, acquisition or transfer already own twenty five percent (25%) or greater ownership interest in the Franchisee or the direct or indirect parent, except where such change, acquisition or transfer involves only limited partner interests. Without limiting the above, any change in the majority of the general partners of Franchisee (if any) will be presumed a change in control. A transfer also occurs whenever there is a change in actual working control (but not including non-ownership management), in whatever manner exercised, over the affairs of a Franchisee or its direct parents. For purposes of clarification, administrative restructurings that do not involve the introduction of new management would not be considered a change of control (e.g. a new holding company with the same shareholders or a change in reporting structure within the same parent organization).

Section 5. FRANCHISE FEE.

(A) Payment to City. The Franchisee shall pay the City a franchise fee in an amount equal to five percent (5%) of Gross Revenues.

(B) GAAP (General Acceptable Accounting Principles) applies. Records of Cable System

revenues and expenses shall be kept in accordance with GAAP.

(C) Not in lieu of any other assessments, tax or fee. The franchise fee is in addition to all other generally applicable fees, assessments, taxes or payments that the Franchisee may be required to pay under any federal, state, or local law, except as required by 47 U.S.C. § 542.

(D) Payments. Franchise fees shall be paid quarterly commencing thirty days after the end of each calendar quarter. **Payments shall include reasonable detail to identify sources of income from which gross revenue is calculated.**

(E) No accord or satisfaction. In accordance with the appropriate statute of limitations, no acceptance of any payment by the City required by this Franchise shall be construed as a release or an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee or for the performance of any other obligation of the Franchisee.

(F) Payment records. The City may, from time to time, and upon reasonable advance written notice, inspect and audit any and all books and records to determine whether Gross Revenues and franchise fees have been accurately computed and paid. The Franchisee agrees to produce all financial records necessary for the City to review in the City of Roswell. In addition to paying all fees owed plus interest equal to 3% above the rate for the three-month Federal Treasury Bills at the most recent United States Treasury Department sale of such Treasury Bills occurring prior to the due date of the payment, in the event that the City reviews the Franchisee's franchise fee payments, and finds that the Franchisee has underpaid the fee owed for any year in an amount exceeding five percent (5%) of the franchise fees actually paid or ten thousand dollars (\$10,000), whichever is less, Franchisee shall pay the reasonable cost of the City's review. The City agrees not to audit more than once every two years, but must audit at least once every three years.

(G) Consumer disclosure. The amount of a subscriber's total bill assessed as a franchise fee may be listed as a separate line item.

~~(H) On March 14, 2002, the FCC adopted a Declaratory Ruling concluding that Cable Modem service is to be classified as an "interstate information service" and that Cable Modem revenues should no longer be included in the calculation of Cable Service fees. However, the FCC did not seek comment on the role of state and local franchising authorities in regulating cable modem service. Given this development, the City and Franchisee agree that upon any final FCC determination regarding its ruling and related matters (including any appeals in whatever forum) the City and Franchisee will re-open this Franchise for further negotiations only on the issue regarding the treatment of fees for Cable Modem service.~~

Section 6. EXERCISE OF RIGHTS UNDER A FRANCHISE – MINIMUM CONDITIONS ON USE OF PROPERTY; CONSTRUCTION.

(A) City use of facilities. Subject to meeting the requirements of National Electrical Safety Code of the American Insurance Association and all applicable state and local laws and rules, the City shall have the right at its own expense to install and maintain free of charge upon any poles or in any conduit owned by a Franchisee any wire and pole fixtures that do not interfere with the Cable Service operations of the Franchisee.

(B) Joint use. Upon request by the City and to the extent the Franchisee legally can do so, pursuant to its leases and agreements with other persons using the Right-of-Way, the Franchisee will grant joint use of easements or private Rights-of-way which it now, or in the future, has an interest in, to the City for purposes, including but not limited to parks, drainage facilities, bikeways, traffic conduits, mass transit corridors, sanitary sewer lines, pedestrian area parking, open spaces, and electric, natural gas, and water service distribution, provided that the Franchisee shall not be required to make such an offer in any circumstance where such offer would interfere with the Franchisee's use of the easements or private Rights-of-Way or in any instance where the City would provide Cable Service. If the City's joint use is accepted by the Franchisee, then any fees Franchisee is required to make for the joint use shall be paid by the City and any improvements deemed appropriate by the City shall be made by the City at its sole expense.

(C) Budgeting. To facilitate the City's annual budget process, on or before the 1st of November and each succeeding 1st of November thereafter during the term of any Franchise granted under this Article, the Franchisee will provide the City, upon City's request, with an estimate of the Gross Revenue and resultant franchise fee for the following calendar year. The estimated Gross Revenues and resultant franchise fees are not a guarantee and shall not create a duty or obligation on the part of the Franchisee to meet Gross Revenue estimates or remit any estimated franchise fee amounts.

(D) All work subject to City laws and regulations. The construction, operation, and repair of Cable System shall be performed in compliance with all laws, ordinances, resolutions, departmental rules, regulations, written policies, and practices affecting such system. Persons engaged in the construction, operation, or repair of the Cable System shall exercise reasonable care in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

(E) Permits. Construction, operation, or repair of the Cable System shall not commence until all required permits have been obtained from the proper City officials and all required permit fees have been paid. All work performed will be performed in strict accordance with the conditions of the permit. City will not unreasonably withhold granting of permits. Upon order of the City, any work and/or construction undertaken that is not completed in compliance with the City's requirements, or which is installed without obtaining necessary permits and approvals shall be removed in accordance with the reasonable time line set forth by the City, unless Franchisee receives the necessary permits and approvals and/or corrects the non-compliant work or construction. To the extent generally required of others for construction within the City, Franchisee shall reimburse the City for costs incurred in inspecting construction undertaken in the course of major upgrades and/or installation of fiber optics.

(F) Safety codes. Without limiting the foregoing, the installation of the Cable System shall be in accordance with the relevant requirements of the National Electrical Safety Code of the American Insurance Association (successor to National Board of Fire Underwriters) and all applicable laws, ordinances, rules, regulations of the state and of the City affecting electrical installations and buildings in effect at the time of such installation. All structures and all lines, equipment, and connections in, over, under, and upon the streets shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.

(G) Maps. Franchisee shall file maps and/or drawings showing the location of any construction

or extension of its facilities and services in any Public Rights-of-Way of the City. For multi-conduit duct banks, maps and drawings shall show overall size, material, and configuration of the duct bank.

(H) Installations, excavations, and restorations. The City shall have the right to regulate the time, manner and location of facilities in the Public Rights-of-Way. Without limiting the foregoing, the City may require Franchisee, where unreasonable delay in Franchisee's work will not result, to coordinate its work with work performed by others in the Public Rights-of-Way so that interference with the use of the Public Rights-of-Way by others, including others that may be installing cable systems, may be minimized. The City may require a person using the Public Rights-of-Way to cooperate with others through joint trenching and other arrangements to minimize adverse impacts on the Public Rights-of-Way, subject to Franchisee's right to not be unduly delayed in its emergency or planned work. The Franchisee shall have the right to excavate in, occupy, and use all Public Rights-of-Way and easements dedicated for compatible uses for the purpose of installing, erecting, constructing, repairing, maintaining, removing, relocating, and operating the Cable System after obtaining any and all appropriate permits from the City, provided, however, that:

(1) The Franchisee shall not place any of its facilities on, over, under, or within any City park, duly designated as such by the City without first having obtained the written permission of the City;

(2) The Franchisee shall not place any of its facilities on, over, or within the median portion of any boulevard or parkway, except for perpendicular crossings, without first having obtained the written permission of the City;

(3) No cable, line, wire, amplifier, converter or other piece of equipment owned or controlled by the Franchisee shall be installed by the Franchisee inside a dwelling or other occupied structure without first securing the permission of the owner or the lawful occupant of the property involved;

(4) The City reserves the right to determine the location of work in the Right-of-Way. The City shall not unreasonably withhold or restrict Franchisee's access to Rights-of-Way; and,

(5) Franchisee shall endeavor to employ trenchless technology in the placement of its facilities where technically and financially appropriate.

(I) Work involving excavations; notice. Except in an emergency, prior to the commencement of any work by the Franchisee which involves excavation in any Public Rights-of-Way, the Franchisee shall notify the City, and shall pay any generally applicable fees.

(J) Clean-up and restoration. After any excavation shall be made and after work is completed, the Franchisee, at Franchisee's expense, shall as soon as practicable but not longer than two days, weather permitting, remove all surplus material, and restore the portion of the Public Rights-of-Way to a condition that reasonably meets or exceeds the pre-excavation condition of such Rights-of-Way, subject to inspection by the City. Any other affected public or private property shall be restored to a condition reasonably as good as that which existed prior to the work. If the Franchisee fails to restore promptly the affected property, including reseeding, then following written notice to Franchisee, and reasonable opportunity to cure, the City may make the restoration in a manner satisfactory to City, and all costs incurred for such restoration, whether done with City work forces and equipment or otherwise shall be paid by the Franchisee, including the cost of any inspectors the City may assign to the project.

(K) Maintaining facilities in good condition. The Franchisee shall be responsible for the

maintenance of its own equipment, facilities, and appurtenances placed upon, over, or under the public Right-of-Way, including the removal of all graffiti from Franchisee's property. If five (5) days after notice from the City such graffiti has not been removed, it will be removed by the City at Franchisee's sole cost.

(L) Persons with disabilities. The Franchisee shall ensure its public facilities in Public Rights-of-Way are located and constructed in a manner consistent with any requirements of the Americans with Disabilities Act (ADA) applicable at the time of construction. Following notice by the City of an ADA construction problem, the Franchisee shall have 30 days or other reasonable time to remedy the problem, subject to Franchisee's right to contest the alleged ADA violation.

(M) Utility coordinating committee. Execution of any Franchise requires the Franchisee to participate with a local utility coordinating committee, or a Franchisee may provide a similar service pursuant to a Franchise, which service would be governed by state law. If the Franchisee elects to become a member of the local utility coordinating committee, the Franchisee further agrees to participate in such organization(s) and abide by their articles of incorporation, by laws, and other requirements.

(N) Use of existing poles and conduit. Franchisee shall use existing poles and conduit wherever appropriate. Additional poles may not be installed in the Right-of-Way without the permission of the City. While it is the policy of the City to minimize the increase of any above ground utilities, no undergrounding shall be required solely because of the Franchisee's status as a Cable System, nor where other existing utility facilities are above ground.

(O) Publicizing proposed construction work.

(1) Franchisee will publicize the initial build or any substantial rebuild or upgrade of its Cable System cable in each affected neighborhood at least one week before commencing that work by providing written notice to the City and by notifying those persons whose property is within 300 feet of the work in at least two of the following ways:

- (a) Telephone;
- (b) In person;
- (c) By mail;
- (d) By distributing flyers to residences; or
- (e) By publication in local newspapers or by television public service announcement.

(2) Apart from any initial build or substantial rebuild or upgrade, any construction will be publicized in accordance with applicable notice requirements.

(3) Before entering onto any person's property, Franchisee will contact the property owner or, in the case of residential property, the resident in the manner described in this section. If Franchisee must enter a residence or building, it must schedule a mutually convenient appointment with the owner or resident. No cable, line, wire, amplifier, converter or other piece of equipment owned or controlled by the Franchisee shall be installed by the Franchisee inside a dwelling or other occupied structure without first securing the permission of the owner or the lawful occupant of the property involved.

(4) For the purposes of this section, the term "substantial rebuild or upgrade" means the planned replacement or addition of trunk or distribution cable (but not drops) affecting:

- (a) More than 10% of the Cable System Subscribers; or
- (b) Involving more than 20 miles of plant.

(5) During the period of any Cable System cable initial build or rebuild, Franchisee will

maintain a file open for public inspection showing its timetable for constructing the Cable System cable by area of the City.

(P) System Maintenance. Scheduled maintenance will be performed to minimize the effect of any necessary interruptions of Cable Service.

(Q) Relocation.

(1) Franchisee shall, by a reasonable time specified by the City, protect, support, temporarily disconnect, relocate, or remove any of its property when requested by the City by reason of traffic conditions; public safety; public Right-of-Way construction and repair (including re-grading, resurfacing or widening); public Right-of-Way vacation; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned system or utility, public work, public facility, or improvement. Collectively, such matters are referred to below as the "public work." If funds are available to any person using the Public Rights-of-Way for the purpose of defraying the cost of any of the foregoing, the City shall reimburse the Franchisee in the same manner in which other persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the City shall make application for such funds on behalf of Franchisee.

(2) The City or agent shall provide written notice describing where the public work is to be performed at least two weeks prior to the deadline by which Franchisee must protect, support, temporarily disconnect, relocate or remove its facilities. However, in an emergency or where a Cable System creates or is contributing to an imminent danger to health, safety, or property (and in which case without prior notice), or where the Franchisee has failed, after the notice provide above, to protect, support, temporarily disconnect, relocate or remove its facilities, the City may protect, support, temporarily disconnect, remove, or relocate any necessary parts of the Cable System and charge Franchisee for costs incurred.

(3) Upon written notice of need, Franchisee shall use reasonable good faith efforts to accommodate the construction, operation or repair of the facilities of another person authorized to use the Public Rights-of-Way or public property. A person seeking accommodation shall provide Franchisee reasonable notice, but, except in case of emergency, not less than 30 days prior to the time the accommodation work is to be completed. Such person shall have responsibility for any and all costs associated with Franchisee's efforts to protect, support, temporarily disconnect, relocate or remove its facilities to accommodate the requesting person.

(4) Nothing herein shall be construed to reduce or otherwise affect any right the City or Franchisee has to recover, seek contribution for, or to offset the costs of complying with the requirements of this provision.

(R) Undergrounding. Franchisee shall locate or relocate its facilities underground:

(1) During construction in any area where all existing electric and telephone utilities are located underground or in an area where all electric or telephone utilities are required to be relocated underground; and

(2) In any area where all owners of poles locate or relocate facilities underground, concurrently with the placement of the pole owner's facilities underground. Location or relocation underground according to this provision shall be without direct cost to the City. If funds are available to any person using the Public Rights-of-Way for the purpose of defraying the cost of any of the foregoing, the City shall reimburse the Franchisee in the same manner in which other persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the City shall make application for such funds on behalf of

Franchisee.

(S) Public works and improvements.

(1) Whenever the City shall excavate or perform any work in any present and/or future Public Rights-of-Way of the City, or shall contract, for such excavation or work, where such excavation or work may disturb but not require removal or relocation of Franchisee's facilities, the City shall notify the Franchisee sufficiently in advance of such contemplated excavation or work to enable the Franchisee to take such measures as may be deemed necessary to protect and support such facilities from damage or injury to the public or the City's Public Rights-of-Way. If the Franchisee cannot take such measures, the Franchisee may be required to relocate its facilities in accordance with this Article. In such case, the Franchisee upon request shall furnish field markings to the City or contractor, as the case may be, showing the location of all its facilities in the area involved in such proposed excavation or other work.

(2) Whenever Franchisee shall excavate or perform any work in any present and/or future Public Rights-of-Way of the City, or shall contract, for such excavation or work, where such excavation or work may disturb but not require removal or relocation of City's facilities, Franchisee shall notify the City sufficiently in advance of such contemplated excavation or work to enable City to take such measures as may be deemed necessary to protect and support such facilities from damage and possible inconvenience or injury to the public or City's Public Rights-of-Way. If the City's facilities are not clearly marked, the City will notify Franchisee and provide field markers or locaters for their facilities.

(3) Nothing herein shall be construed to reduce or otherwise affect any right Franchisee has to recover (from a party other than the City), seek contribution for or to offset the costs of complying with the requirements of this provision. If funds are available to any person using the Public Rights-of-Way for the purpose of defraying the cost of any of the foregoing, the City shall reimburse the Franchisee in the same manner in which other persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the City shall make application for such funds on behalf of Franchisee.

(T) Moving of buildings. Whenever it becomes necessary to temporarily rearrange, remove, lower, or raise the aerial cables or wires or other apparatus of the Franchisee to permit the passage of any building, machinery, or other object, the Franchisee shall perform such rearrangement upon receipt of payment for the estimated costs incurred by the Franchisee in making such rearrangements, and provided that Franchisee received written notice at least 30 days in advance from the person or persons desiring to move said building, machinery, or other objects. The written notice shall detail the route of movement of the building, machinery, or other object. The costs incurred by the Franchisee in making such rearrangements of its aerial plant will be borne by the person or persons seeking such rearrangement, unless the aerial plant is placed or maintained in violation of the applicable rules of any local, state, or federal regulatory agency and thereby unlawfully interferes with the movement.

(U) Interference and Review of City Project Plans. Upon submittal by the City of City construction plans, the Franchisee will review and identify locations of cables and/or conflicts within two weeks of request. The City may require co-location in common trenches where appropriate.

(V) Restoration of property. The Franchisee shall reconstruct, replace, or restore to its previous condition in a timely fashion that portion of any street, alley, or public way or place; and any water, sewer, sanitary sewer, storm drainage, traffic signalization or other facility of the City,

disturbed or damaged by the Franchisee, to a condition reasonably acceptable to the City consistent with reasonable standards of safety and appearance as required by generally applicable law and codes adopted pursuant to exercise of the City's police powers.

(W) Supplying maps. Franchisee shall maintain on file all available maps, operational data, and reports pertaining to its operations in the City. The City may inspect the maps, data, and reports at any time during business hours. Upon request of the City, the Franchisee shall furnish to the City, as soon as practicable without charge, current maps showing the location and dimension of any facilities within the Franchise Area. Franchisee supplying maps under this provision may excise proprietary information so long as the location and dimension of any facilities, and their character (e.g. pole, equipment cabinet, fiber optic cable, power line) are clearly shown.

(X) Conditions of sale.

(1) If a renewal of a Franchise held by Franchisee is denied and the City acquires ownership of a Franchisee's Cable System, or effects a transfer of ownership of the system to another person, the valuation of any such acquisition or transfer shall be in accordance with 47 U.S.C. §547(a).

(2) If a Franchise held by Franchisee is revoked for cause and the City acquires ownership of the Cable System or effects a transfer of ownership of the system to another person, the valuation of any such acquisition or transfer shall be in accordance with 47 U.S.C. §547(b).

(Y) Utility contracts. Within 30 days of Franchisee contracting with another utility provider to use any property or facilities of Franchisee located in the Right-of-Way, Franchisee agrees to notify the City of such contract and identify the provider.

(Z) Failure to perform. If Franchisee should fail to perform any work required under this Section after written notice and reasonable opportunity to cure, **the City** may cause work to be performed, and may bill the Franchisee therefore, or draw upon any security fund or bond to recover its costs. If the City bills the Franchisee, the Franchisee shall pay the amount billed within 30 days of receipt of the bill.

Section 7. CONSTRUCTION PROVISIONS.

(A) General system design.

(1) Equipment and facilities shall be maintained so that the subscriber network is capable of transporting at least fifty-four (54) analog **and/or digital** channels ~~or its equivalent~~.

(2) Franchisee shall install and maintain facilities and equipment that permit and are capable of meeting FCC standards for passing through the program related television video and audio signals received at the headend without substantial alteration or deterioration (thus, for example, the system will include components such that a signal received at the headend in color may be received by a subscriber in color, and a stereo signal in stereo). Without limiting the foregoing, facilities and equipment shall be installed and operated so that subscribers can receive closed captioning and secondary audio in accordance with federal law and regulation. Franchisee, except as applicable FCC regulations may prohibit, may affect vertical blanking intervals in transmissions **of analog channels**.

(3) Franchisee shall comply with applicable federal laws concerning system compatibility with subscribers' consumer electronics equipment. Franchisee shall comply with all applicable laws concerning disabled access to its services.

(4) Franchisee shall deliver maps or drawings to the City showing the location of its trunk

and distribution lines and other major facilities located in the rights of way. The maps need not reflect all electronic components and may exclude any sensitive commercial information.

(5) Construction standards. Franchisee will comply with all lawful and generally applicable construction standards utilized by the City.

(a) The construction, operation, and repair of the Cable System will be in accord with all applicable law. At a minimum, all construction by Franchisee done by Franchisee after the effective date of this Franchise shall comply with the Manual of Construction Procedures most recently submitted; IEEE standards, the National Electric Code, the National Electrical Safety Code and any other applicable safety codes. The most stringent applicable code or standard will apply in the event of any conflict (except insofar as that standard, if followed, would result in a system that could not meet requirements of federal, state or local law). The construction, operation, and maintenance of the cable system shall be performed by experienced and properly trained properly and licensed maintenance and construction personnel.

(B) Standards following completion of upgrade. Upon completion of any cable system upgrade, the Cable System shall:

(1) Utilize facilities and equipment generally comparable to that used in other high-quality, reliable cable systems of similar design, including commercially reasonable backup power resources. The Cable System shall have the level of reliability required to support a high-quality, broadband information service;

(2) Be two-way activated and shall include the facilities and equipment (except customer premises equipment) required to support broadband interactive services, such as Internet services.

(3) Provide reliable service and possess auto-start back-up power at the headend and elsewhere reasonably necessary (consistent with accepted industry standards and the system design) to avoid or minimize service interruptions. Back up power supplies at critical points in the distribution system shall be capable of carrying their individual loads for a minimum of two (2) hours. Franchisee shall be able to identify power outages affecting the Cable System and when and where the Cable System has switched to back-up power supplies.

Section 8. PRESERVATION OF BENEFITS AND STATUS QUO. As of the effective date of the franchise, Franchisee was providing one (1) channel to subscribers for PEG use. It will continue to provide that channel for PEG and/or I NET use, continue the current personnel support and continue to maintain the wiring that connects the City's studio to Franchisee's headend. The City will continue to manage its equipment and facilities

Section 9. SYSTEM FACILITIES, EQUIPMENT AND SERVICES.

(A) Support equipment and facilities.

(1) Franchisee must have sufficient equipment and facilities and the trained and skilled personnel required so that Franchisee complies with each and every requirement of applicable law, including applicable customer service requirements, technical standards, maintenance standards and requirements for responding to system outages. This includes the facilities, equipment and staff required to:

(a) Properly test the system and conduct an ongoing and active program of preventive maintenance and quality control; and

(b) Be able to quickly respond to customer complaints and resolve system

problems.

(2) Franchisee must ensure that its headend has adequate space and is otherwise properly designed in order to accommodate the equipment and facilities necessary to meet its obligations under the franchise.

(B) Technical standards. The cable system must meet or exceed the technical performance standards set forth in 47 C.F.R. § 76.601 and any other applicable standards, provided that, nothing in this provision is intended to permit the City to exercise any authority that it is prohibited from exercising under applicable federal law.

(C) Future upgrades. It is Franchisee's responsibility to make such commercially practicable improvements to its Cable System throughout the Franchise term to ensure that Subscribers are able to obtain advanced Cable Service, and so that services can be added throughout the franchise term.

(D) Tests during construction.

(1) Franchisee shall conduct acceptance tests on each newly constructed or upgraded segment prior to subscriber connection or activation.

(2) Franchisee shall test random samples of components before installation.

(3) Franchisee shall prepare reports sufficient to show the testing required in Sections 8(D) - 8(G) have been completed.

(E) Inspection and testing. The City shall have the right to inspect the Cable System during and after the upgrade to ensure compliance with this franchise, and applicable provisions of local, state and federal law. The City:

(1) May require the Franchisee to perform tests based on the City's investigation of Cable System performance or on subscriber complaints; and

(2) May require Franchisee to prepare a report to the City on the results of those tests, including a statement identifying any problems found and the actions taken to correct those problems. This provision is subject to any limitations on the City's authority under applicable law.

(F) System maintenance.

(1) Franchisee may intentionally interrupt service on the Cable System only for good cause and for the shortest time possible and, except in emergency situations or to the extent necessary to fix the affected Subscriber's service problems, only after a minimum of forty-eight (48) hours' prior notice to Subscribers and the City of the anticipated service interruption; provided, however, that there shall be no minimum prior notice period, for planned maintenance that:

(a) Does not require more than two (2) hours' interruption of service; and

(b) Occurs between the hours of 1:00 a.m. and 6:00 a.m.

(G) FCC-mandated testing. Franchisee shall notify the City in advance of conducting any proof-of-performance test required by the FCC, so that the City may observe the testing. Upon request, the City shall be provided the test results and any supporting documentation regarding the tests and testing equipment and procedures.

(H) Emergency alert system. Franchisee must install and maintain an emergency alert system that can override audio and video on all channels to provide an emergency alert to all subscribers in the City. The system must be designed and maintained so that local officials designated by the City can activate the system remotely without the assistance of Franchisee, using a telephone and secure password or by such other technical means as the City may approve. The system must be

designed and maintained so that the designated officials, from a touch-tone telephone, can activate a pre-recorded text message, and at such officials' option, an accompanying live audio voice message for up to two (2) minutes. The system must be designed so that emergency messages may be sent only to subscribers in the City of Roswell. The City and the Franchisee shall meet periodically to discuss operational procedures for use of the emergency alert system. As part of those discussions, the parties may agree on alternative capabilities and activation procedures for the emergency alert system. Subject to the foregoing, the emergency alert system should be integrated to the extent reasonably possible with other emergency alert systems the Franchisee is required to provide under federal or state law. The City acknowledges that it will not be able to override national or state alerts.

(I) Parental controls. In addition to satisfying any obligations that it has under applicable law to provide parental control devices, or otherwise block programming on the cable system, Franchisee shall ensure that any system for ordering movies or other pay-per-view programming is designed, through use of systems such as PIN number systems, to prevent children from ordering programming without parental consent.

Section 10. INSTITUTIONAL NETWORK

The City and Franchisee agree that with proper planning and resources, an Institutional Network infrastructure facilities (referred to as the I NET) may be helpful in improving City governmental communications and efficiency. Franchisee agrees to work with the City to install, construct or otherwise provide an I NET comprised of two pairs of single mode fiber on the Cable System network to connect municipal government offices. The parties acknowledge that this will be a significant undertaking and construction will only begin when the City has developed plans to utilize the I NET. Construction will be done in accordance with the plans provided to Franchisee. In the event the City so requests, the City and Franchisee agree to reopen this Franchise solely to discuss the construction of the I NET, limitations on use of the I NET, who may use the I NET, and payment to Franchisee for the installation, construction and maintenance of any I NET. ~~City agrees that it will not make a request for the installation or construction of any I NET prior to three (3) years from the effective date of this Franchise.~~ In the event the parties agree to construct an I NET, the City and Franchisee agree to negotiate a financial package to pay for the I NET construction. *As a fall-back, if the parties are unable to agree on a package, Franchisee will impose either a twelve (\$0.12) cents per subscriber per month fee or some other mechanism resulting in a monetary equivalent which will be used to pay for the cost of construction.*

Section 11. INTERCONNECTIONS

(A) Generally. The Cable System's existing facilities and equipment, and future design changes, must be installed and managed to provide interconnections with all other cable systems and open video systems in the City, as necessary to permit the seamless exchange of any I NET and/or PEG communication whether video, data or voice across networks, subject to limitations on uses under Section 9. The City may require Franchisee to interconnect with other open video and cable systems in the City, and in communities adjoining to the City where the City determines that the interconnection of I NET or PEG access is necessary and Franchisee must interconnect on its own

initiative as necessary to satisfy its PEG obligations in a timely manner. Unless otherwise permitted by the City, all interconnections shall be bi-directionally activated fiber links.

(B) Relief from Obligations. Franchisee may obtain relief from an interconnection requirement where Franchisee shows to the satisfaction of the City that it is technically infeasible to perform, and where the Franchisee proposes a reasonable alternative, in light of the purposes to be served by the interconnection. Franchisee may also obtain relief from the interconnection requirement where the interconnection requires a contract between the Franchisee and a third party (an affiliate of Franchisee is not a third party), and the third party and Franchisee are unable to agree upon interconnection terms. In such a case, Franchisee must promptly notify the City that it has been unable to reach an interconnection agreement; must present the interconnection agreement that it proposed and any proposal by the third party; and must explain the reasons why the parties have been unable to reach agreement. The City will then assist in negotiations with the other cable system or open video system provider in securing an arrangement acceptable to Franchisee.

Section 12. SUBSCRIBER NETWORK CHANNELS AND FACILITIES FOR PEG USE.

(A) Generally. During the Franchise term, Franchisee shall provide PEG Channels on the lowest level of service made available to any subscriber; alternatively, if program choices are selected by a menu, PEG programming choices must be displayed equally as prominently as commercial programming choices offered by Franchisee if the Franchisee has editorial control over the menu. It is the responsibility of the PEG channel operators to timely provide in the appropriate format information that it wishes to have displayed on the menu.

(B) Management and Allocation of Channels. The City may designate Designated Access Providers; Franchisee may designate Channels provided under Section 11 for Public, Education, Government or combined PEG use. Nothing herein shall prevent the Designated Access Provider from allowing PEG capacity designated for a particular PEG use to be used for other PEG purposes.

(C) Analog/Digital Channels.

(1) Franchisee agrees to provide up to three PEG Channels for the City's use in whatever combination of Public Access, Educational and Governmental use the City determines best. The City may allocate programming from all three categories of PEG in a single Channel at its discretion. The Channels may be analog or digital at the City's choice **so long as Franchisee continues to offer analog channels**. Though there is no timeline for delivering Channels, the City agrees that it will not request a second PEG Channel until the first Channel is unable to accommodate additional new programming. The third Channel will be allocated in the same manner.

(2) The Channels must be capable of supporting the transmission of a standard video signal of a quality comparable to commercial signals carried on the Subscriber Network in the same format. Franchisee must carry the entire PEG signal (except for any vertical blanking interval) and deliver it to the Subscriber so that it is viewable by all Subscribers, whether they receive digital, or analog service, or a combination, without the need for any equipment other than that the Subscriber requires to receive the level of Cable Service it has chosen..

(3) When the lowest level of Cable Service is delivered in digital format, Franchisee's obligation to provide any PEG channels on its analog lineup shall end, and the PEG channels at that time being delivered in analog format will be replaced by an equal number of digital channels.

Franchisee shall not be required to supply digital decoders to any Subscriber not otherwise authorized to receive digital service from Franchisee.

(4) Conversion to Digital. The cost of the equipment required to provide a digital PEG signal feed, and to compress the digital PEG signals to deliver them to Subscribers, will be borne by the City if the City opts to use digital PEG Channels before all other basic service programming is delivered in a digital format. In this instance, the City will also be responsible for digital compression costs. It may implement any digital compression ratio compatible with the technical requirements of Franchisee's Cable System. The City shall take no action causing Franchisee to be unable to satisfy the performance requirements specified by the Franchise.

(5) Description of Digital PEG Channels. Each digital PEG Channel must be capable of transmitting at the compression ratio comparable to that used for delivery to Subscribers of the majority of Franchisee's video programming services transmitted using digital compression. Nothing herein shall prevent the parties from agreeing to a different compression ratio. Each digital PEG Channel must be capable of transmitting a compressed video programming signal. The City can use each Channel to deliver two separate signals, one single signal, or any combination of signals.

(E) Limitations on Use. PEG channels shall not be used to cablecast commercial programming, paid advertising, or promotional material unrelated to the specific programming purpose. PEG Channels may not be leased or assigned to third parties. The parties do not intend to limit sponsorship announcements comparable to those that might be carried on a noncommercial broadcast (e.g., PBS) station, or to prevent Schools from charging course fees, and then delivering the course via the PEG Channels; or to solicit financial support for the provision of PEG Access by Designated Providers and for charitable, educational or governmental purposes.

(F) Transmission Quality of PEG Channels. Franchisee shall ensure that the transmission quality for each PEG Channel delivered over the Subscriber Network will meet or exceed applicable FCC signal quality requirements, provided that interference and distortion are prevented and that the level of quality is equal to that the Cable System's commercial channels but in no case better than the quality of the signal delivered to the Cable System by the PEG operators.

(G) Upstream Capacity for PEG Use.

(1) Franchisee shall provide and maintain an activated dedicated bi-directional, fiber-optic link between its headend and a PEG Access Center Studio at a location to be designated by the City. Franchisee shall provide at least the amount of activated capacity on the link so that the Studio can program each activated Access channel on the Subscriber Network and the additional PEG Use channels simultaneously by sending a feed to the headend that Franchisee can connect to the appropriate Access Channel or to the interconnect. Franchisee will be responsible for placing the signals sent onto the proper Access Channel or interconnect. However, the City agrees that such PEG Access Center Studio shall be within 1 aerial mile of Franchisee's headend.

(2) Franchisee will also provide sufficient fiber capacity from the PEG Access Center Studio to City Hall. The City agrees that such PEG Access Centers shall be within 2500 feet of City Hall.

(3) The City may add equipment necessary so that it can transmit more signals to and from the I-Net. However, the cost of this additional equipment is the City's responsibility.

(4) If the headend is moved or replaced, Franchisee shall transfer the fiber-optic link(s) to the new location (including, without limitation, moving terminal equipment and splicing fiber, as necessary).

~~(5) Upon request, Grantee will provide the City with sufficient camera and other equipment for use by the local public school district to facilitate the programming and airing of education related material. Grantee will allocate a total of \$30,000.00 for the purchase of studio fixed equipment to facilitate the airing of public school board meetings and other incidental uses filmed at the same location. Whatever funds remain after the equipment purchases would be then remitted to the City for the purpose of updating its camera equipment.~~

(H) Cable outlets for educational and government facilities.

(1) Franchisee shall, without charge, and except where limited herein, provide upon request the following to non-residential, Title I funded RISD school buildings, non-residential City municipal government buildings and a PEG Access Studio within Franchisee's Franchise Area not requiring a line extension or a drop in excess of 125 feet:

(a) One (1) activated subscriber network service drop and outlet;

(b) Basic Cable Service and the channels on the most widely subscribed to satellite tier offered on the Cable System (except where programming related contracts preclude it) to the outlet provided above in (a);

(c) Cable modem service to each public library operated by the City (if and when cable modem service is provided by Franchisee in that locale) and City Hall. Franchisee shall prepare a plan to provide discounted cable modem service to any other City municipal government building designated by the City during the term of this Franchise; and,

(d) The terminal equipment necessary to receive the services listed in subparagraphs (a)-(c) at the outlet provided above in (a).

(2) The City or school may itself extend video service lines from the Franchise provided drop to additional City or school outlets within the same building, but service will not be provided to any residential quarters. Franchisee shall not be responsible for signal leakage or the signal quality at any additional outlet. Franchisee also will install such wiring upon request, at its regular hourly service charge for labor and costs of materials. Franchisee is responsible for delivering the services provided for in (1)(b) above, within applicable FCC signal quality standards, to Franchisee's installed outlet at the location. However, Franchisee is not responsible for signal quality or leakage at any outlet beyond that which it installs pursuant to (1)(a) above. If a location adds multiple outlets, it is responsible and must pay for any additional equipment and facilities required to make them operational.

(3) The City shall take reasonable precautions to prevent any use of the Franchisee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. ~~The City shall hold the Franchisee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this subsection, including signal leakage fines.~~ The Franchisee shall not be required to provide an outlet to any buildings where a non-standard Installation is required, unless the City or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-standard Installation.

~~(I) Franchisee shall provide as a one-time grant for PEG and I-Net Use \$10,000.00 payable to the City within sixty (60) days of Franchisee's receipt of the City's written notice that it has developed a plan for use of the I-Net.~~

Section 13. OPERATION AND REPORTING PROVISIONS.

(A) Right to inspect and copy. The City shall have the right to inspect and copy books and records: related in whole or in part to the construction, operation or repair of the Cable System and reasonably necessary for the City to monitor compliance with the terms of this Ordinance or applicable law; or reasonably necessary to the exercise of any right or duty of the City under the same. Grantee is responsible for maintaining control over books and records related in whole or in part to the construction, operation, or repair of the Cable System. It is responsible for producing these records within its care, custody or control upon the City's request for the City's inspection within the City limits of the City. The records that Franchisee must produce shall include, but are not limited to records used to compute Franchise fees, and other records related to compliance with any provision of this Franchise. However, nothing herein gives the City the right to inspect or copy Franchisee's confidential financial and/or proprietary information nor access to Franchisee's electronic data systems. Books and records must be maintained for a period of three years, except that Franchise may specify a shorter period for certain categories of voluminous books and records where the information contained therein can be derived simply from other materials. The City agrees it will not audit more than once every two years.

(B) Reports. Any report required hereunder may be prepared in a manner consistent with the Franchisee's regular records at the level where normally kept.

(1) The City Manager may from time to time (but not more often than once per year) direct Franchisee to prepare reports reasonably necessary to the City's monitoring compliance with the terms of this Franchise or applicable law and to submit those reports by a date certain, allowing reasonable time for preparation, in addition to those otherwise required.

(2) Within 30 days of a request by the City Manager, but not more than two times per year, Franchisee shall submit a report to the City containing the following information:

(a) The number of service calls (calls requiring a truck roll) received during the prior quarter and the percentage of service calls compared to the Subscriber base; and

(b) The total estimated hours of known outages as a percentage of total hours of operation. An outage is a loss of sound or video on at least three signals, affecting five or more Subscribers.

(3) Unless an exemption is granted by the City Manager, no later than 90 days after the end of its fiscal year, Franchisee shall submit the following information, except that the information required by Section 13(C)(3), below, need only be provided where there has been a change from the preceding year:

(a) An audited or certified revenue report from the previous calendar year for the Cable System, and a certified statement setting forth the computation of Gross Revenues used to calculate the franchise fee for the preceding year and a detailed explanation of the method of computation showing (i) Gross Revenues by category (e.g., basic, pay, pay-per-view, advertising, installation, equipment, late charges, miscellaneous, other); and (ii) what, if any, deductions were made from Gross Revenues in calculating the franchise fee (e.g., bad debt, credits and refunds), and the amount of each deduction.

(b) A report showing, for each applicable customer service standard, the Franchisee's performance with respect to that standard for each quarter of the preceding year. In each case where Franchisee concludes it did not comply fully, the Franchisee will describe the corrective actions it is taking to assure future compliance. In addition, the report should identify the number and nature of the written customer service complaints received and an explanation of their dispositions.

(c) An ownership report, indicating all persons who at the time of filing control or own an interest in the Franchisee of 10% or more.

(4) Within 10 days of their receipt or (in the case of documents created by the Franchisee or a person acting on its behalf) filing, Franchisee shall provide the City:

(a) Notices of deficiency or forfeiture related to the operation of the Cable System;

(b) Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Franchisee or by any partnership or corporation that owns or controls the Franchisee directly or indirectly; and

(c) **Upon request of the City Manager, Copies** of all petitions, applications and communications in respect to any matters affecting the Cable System submitted by the Franchisee to the Federal Communications Commission, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction.

(C) Other Records Required. Unless the City Manager specifically waives the requirement in writing, Franchisee shall at all times maintain:

(1) Records of all written complaints received, their nature and resolution. The term "complaints" refers to complaints about any aspect of the Franchisee's construction, operations or repair activities;

(2) Records of outages known to the Franchisee, their cause and duration;

(3) Records of service calls for repair and maintenance indicating the nature of the call for service, the date and time service was requested, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved;

(4) Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended;

(5) Records sufficient to show whether the Franchisee has complied with each FCC customer service standard that applies to it.

(D) Exemptions. The City Manager may exempt Franchisee from its obligations under Section (C) if the City reasonably determines that the requirement would be unduly burdensome or unnecessary, and that City and Subscriber interests may be adequately protected in some other manner.

(E) Uses of system. Without limiting the foregoing, upon request, Franchisee must advise the City of all services it provides via the Cable System at least thirty (30) days prior to offering such services (the term "services" for purposes of this Section, would include, without limitation, the provision of dark fiber for entertainment and other purposes, such as data transmission, local area networks, and voice transmission; and to the extent known, the services that are provided by third parties via the Cable System).

(F) Retention of records; relation to privacy rights. Franchisee shall take all steps required, if any, to ensure that it is able to provide the City all information which must be provided to the City or that may be requested by the City under applicable law or this Franchise, including by providing appropriate subscriber privacy notices. Nothing in this Section shall be read to require Franchisee to violate 47 U.S.C. § 551 or other applicable law governing privacy. Franchisee shall be responsible for redacting any data that state or federal law prevents it from providing to the City. Records shall be kept for at least five (5) years, except that service call logs may be retained for three (3) years, so long as the information contained therein is reflected in other documents.

Section 14. CUSTOMER SERVICE STANDARDS. Franchisee shall meet or exceed the cable television customer service standards adopted by the state (if any) or the FCC.

Section 15. RATE REGULATION. Upon certification by the Federal Communications Commission, the City may regulate Franchisee's rates and charges related to its lowest level of service, and order refunds of unreasonable rates charged, to the extent that it is permitted by applicable law. All rates that are regulated by the City must be reasonable and, except as applicable law provides otherwise, can only be established or changed with the prior approval of the City. Failure of the Franchisee to comply with valid rate orders issued by the City shall constitute a material breach of the Franchise, subjecting the Franchisee to liquidated damages as set forth in Section 19 of the Cable Ordinance, unless a Stay is ordered by the FCC.

Section 16. INSURANCE; SURETY; INDEMNIFICATION.

(A) Insurance.

(1) General conditions. Except as this Franchise may otherwise provide, Franchisee shall procure and maintain in full force and effect during the life of its Franchise, such insurance as is required in this Section 16 below. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico, and they shall be in a form reasonably satisfactory to City and properly filed and approved by the Superintendent of Insurance, State of New Mexico. Franchisee shall furnish City a minimum of seven copies of certificates of required insurance. All certificates of insurance (or policies) shall provide that 30 days' written notice be given to the City of Roswell Risk Manager before a policy is cancelled, materially changed or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than workers' compensation, the City shall be a named an additional insured. All coverages shall be primary with respect to operations provided. The certificates of insurance and endorsements for each policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates and other required proofs shall be filed within 30 days of the issuance of this Franchise, once a year thereafter, and whenever there is any change in coverage.

(B) No work without insurance. Franchisee (or those acting on its behalf) shall not commence construction or operation of the Cable System without first obtaining insurance in amounts and of a type satisfactory to City. The required insurance must be obtained and maintained for the entire period the Franchisee has facilities in the Public Rights-of-Way or on public property. If the Franchisee, its contractors, or subcontractors do not have the required insurance, City may order such persons to stop operations until the insurance is obtained and approved.

(C) Work of subcontractors. If any part of the construction, operation or repair of the Cable System is subcontracted, Franchisee shall:

(1) Include any and all subcontractors in his insurance policies; or

(2) Require the subcontractor to secure insurance to protect himself against all hazards enumerated herein which are not covered by Franchisee's policies.

(D) Approval of insurance. Neither approval nor failure to disapprove certificates, policies or the insurance by City shall relieve Franchisee or any sub-Franchisee of full responsibility to maintain the required insurance in full force and effect.

(E) Commercial general liability insurance including automobile.

(1) Franchisee shall procure and maintain during the life of a Franchise a comprehensive commercial general liability and automobile liability insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence and in the aggregate. Said policies or insurance must include coverage for all operations performed for City by Franchisee, including, but not limited to, coverage for collapse (C), explosion (X), and underground (U) liability coverage, coverage for the user of all owned, non-owned, hired automobiles, vehicles, and other equipment both on and off work, and contractual liability coverage which shall specifically insure the indemnification provisions of this Ordinance and any Franchise.

(2) The above requirements shall include, but shall not be limited to, protection against:

(a) Damage to, or destruction of, public and private property including telephone conduit, telegraph conduit, power conduit, telephone signal cable, fiber optics cable, television cable, computer cable, fire alarm circuits, gas mains, gas service connections, sanitary sewers, sewer, house or building connections, water mains, water service connections, steam lines, petroleum products pipe lines, storm drains, storm inlet lines, including all appurtenances thereto while located below the surface of the ground, including injury or death, to person or persons caused by Franchisee's operations, including blasting and trenching-backfilling-tamping with or without the use of mechanical equipment; and

(b) The collapse of, or structural damage to, a building, house or structure, including power, telephone, telegraph, fire alarm, and street-light poles, curb and gutter and sidewalk, on public or private property, and destruction of, or damage to, other public and private property resulting therefrom, including injury or death to person or persons caused by Franchisee, including but not limited to as a result of Franchisee's operations in the removal of other buildings, structures, including their supports, trees and utility poles, or by excavation, including blasting, and trenching-backfilling-tamping with or without use of mechanical equipment. "Other public and private property" as used herein shall include lawns, plants, flowers, trees, fences, yards, walls, etc.

(F) City's protective public liability insurance.

(1) Franchisee shall procure and maintain during the life of a Franchise, a City's protective public liability insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence and in the aggregate, or Franchisee may provide City with evidence of insurance with excess limits in amounts not less than \$1,000,000.

(2) The policy will be written with City as the named additional insured and will provide coverage for City's and its employees while acting within the scope of their duties against all claims arising out of or in connection with the work to be performed.

(3) In lieu of Section 18 F (1) and (2), the City may accept equivalent coverage if approved by the City's Risk Manager.

(G) Workers' compensation insurance. Franchisee shall comply with the provisions of the Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. Franchisee shall procure and maintain during the life of a Franchise, complete workers' and employer's liability insurance in accordance with New Mexico law and regulations. Such insurance shall include coverage permitted under Section 52-1-10 NMSA 1978, for safety devices. With respect to workers' compensation insurance, if Franchisee elects to be self-insured, it shall comply with the applicable requirements of law. If any portion of the

construction, operation or repair of the Cable System is to be subcontracted, Franchisee shall require the subcontractor similarly to provide such coverage (or qualify as a self insured) for all latter's employees to be engaged in such work. Franchisee shall save harmless City, its officers, agents and employees from any claims or actions occasioned by failure of Franchisee to comply with the provisions of this subparagraph. It is agreed that with respect to all workers' compensation insurance, the Franchisee and its insurer shall waive any right of subrogation it may acquire against the City, its officers, agents and employees by reason of any payment made on account of injury, including death resulting therefrom, sustained by any employee arising out of the performance of a Franchise, unless caused by the gross negligence or malfeasance of the City, its officers, agents and employees.

(H) Alterations in limits. This Franchise shall be interpreted to permit the City to require the Franchisee to increase its insurance limits, or obtain additional types of insurance should the City determine in good faith that there are significant increased risks to the City or its citizens based on the Franchisee's actions, by such time as reasonably may be specified by the City.

(I) Ratings. Franchisee's insurer shall have no less than an "A-" policyholder's rating and a financial rating of at least Class XI in accordance with the Best's rating current at the time purchased, unless specifically waived in writing by the Risk Manager of the City.

(J) No contribution. Any insurance or self insurance maintained by the City shall be excess of the Franchisee's insurance and shall not contribute with it.

(K) The insurance requirements are material terms of this Franchise cannot be changed without the mutual agreement of the City and Franchisee. Franchisee shall have insurance in place as herein required by the effective date of this Franchise, and shall, upon request, provide proof of such insurance reasonably satisfactory to the City prior to the effective date of the Franchise grant.

(1) Indemnification. To the extent permitted by applicable law, Franchisee agrees to indemnify and hold harmless City, its trustees, elected and appointed officers, agents, and employees, from and against any and all claims, demands, or causes of action of any kind or nature not resulting from the actions of the City, its trustees, elected and appointed officers, agents and employees, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by City or any third party arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the cable communications system operator, or its agents, independent contractors or employees related to or in any way arising out of the construction, operation or repair of the system, the conduct of Franchisee's business in the City, or the Franchisee's enjoyment or exercise of its franchise.

(2) The City will notify the Franchisee in writing of its duty to indemnify in any case subject to the indemnity in which the Franchisee is not a named defendant or plaintiff. The Franchisee will employ competent counsel, reasonably acceptable to the City attorney.

Section 17. PERFORMANCE GUARANTEES AND REMEDIES.

(A) Construction Performance Bond.

(1) Franchisee shall obtain a performance bond in the amount of \$25,000 by the effective date of the franchise.

(2) The performance bond shall secure the faithful performance of all obligations under this Franchise.

(3) The bond shall provide that, in the event Franchisee fails to complete any Cable

System upgrade, other work in the public Rights-of-Way required by this Franchise, in a safe, timely, and competent manner, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Franchisee, or the cost of completing or repairing the Cable System upgrade or other work in the public Rights-of-Way, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond.

(4) The performance bond shall provide that it shall be forfeited to the City if:

- (a) The Franchisee abandons the Cable System; or
- (b) The Franchise is revoked for cause.

(5) The performance bond shall be issued by a surety with an A-1 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the reasonable approval of the City; and shall contain the following endorsement: "this bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

(B) Material term. The required construction performance bond is a term of this franchise.

(C) Relation to insurance and indemnity requirements. Recovery by the City of any amounts under insurance, the construction performance bond or otherwise does not limit the Franchisee's duty to indemnify the City in any way; nor shall such recovery relieve the Franchisee of its obligations under the franchise, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have.

Section 18. CONTINUITY OF SERVICE.

(A) It is the right of each subscriber in the Franchisee's Franchise Area to receive all available Cable Service offered by the Franchisee as long as the subscriber's financial and other obligations to the Franchisee are satisfied.

(B) The Franchisee shall make its best efforts to provide all Subscribers with continuous uninterrupted Cable Service. At the City's request, the Franchisee shall operate its system for a temporary period (the "transition period") following the termination of its franchise or any transfer as necessary to maintain Cable Service to subscribers, and shall cooperate with the City to assure an orderly transition from it to another entity. The transition period shall be no longer than the reasonable period required to select another entity and in no event shall be longer than twelve (12) months, unless extended by mutual consent of Franchisee and the City. During the transition period, the Franchisee will continue to be obligated to comply with the terms and conditions of this franchise and applicable laws and regulations, and will be deemed to have the necessary authorization required from the City to enable it to provide Cable Service.

(C) If the Franchisee abandons its Cable System during the franchise term or any transition period, or fails to operate its Cable System in accordance with the terms set forth in Section 17 above, the City, at its option, may operate the Cable System or designate another entity to operate the Cable System temporarily until the Franchisee agrees to restore and restores continuous Cable Service in compliance with the franchise until the franchise is revoked and a new entity selected by the City is providing Cable Service.

(D) The City shall be entitled to exercise its rights under Section 17 if the:

- (1) The Franchisee fails to provide Cable Service in accordance with its franchise over a

substantial portion of the Franchise Area for ninety-six (96) consecutive hours, unless such failure is due to force majeure or the City authorizes a longer interruption of service; or

(2) The Franchisee, for any period, willfully and without cause refuses to provide Cable Service in accordance with its franchise over a substantial portion of the Franchise Area.

(E) Rights upon franchise termination or revocation. If the City revokes the franchise or the franchise otherwise terminates, the City shall have the following rights, in addition to the rights specified in this franchise or under applicable law:

(1) The City may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, the City may have the removal done at the former Franchisee's and/or surety's expense, subject to any right of abandonment that may be provided for under applicable law.

(2) The City, by City Council resolution, may acquire ownership or effect a transfer of the Cable System at fair market value if the franchise is revoked for cause in accordance with the Cable Ordinance, at an equitable price. The terms "equitable price" and "fair market value" shall be interpreted in accordance with 47 U.S.C. § 547.

(3) Section **18(E)(2)** does not apply to an abandonment. If a Cable System or any part thereof is abandoned by Franchisee, the City may require the Franchisee to transfer title to the abandoned portions to it at no charge, free and clear of encumbrances, and the same will become the City's property and the City may keep, sell, assign, or transfer all or part of the assets of the Cable System, or otherwise dispose of those assets as it sees fit. In the event the City acquires title, Franchisee shall have no further liability for the Cable System.

Section 19. ENFORCEMENT AND REMEDIES: REVOCATION.

(A) Right to revoke; generally.

(1) The City Council may revoke this Franchise if it finds that Grantee has committed a material breach of this Franchise or repeatedly failed to comply with this Franchise; has defrauded or attempted to defraud the City or Subscribers; or has attempted to evade the requirements of this Franchise.

(2) Before revoking a Franchise, the following must have occurred:

(a) The City Manager must give Grantee notice of an alleged default in performance (which notice will describe the nature of an alleged violation or breach) and a 30 calendar day opportunity to cure or such additional time as is reasonably necessary (the "cure period"); except that an opportunity to cure is not required where the defect in performance **by Grantee** is due to willful misconduct or fraud or attempted fraud, is an adjudicated felony violation of criminal law, or is part of a pattern of substantial violations where the Grantee has already had notice and opportunity to cure. The City may extend the cure period for up to 30 additional days if Grantee has diligently attempted to correct the alleged default.

(b) Not sooner than 30 calendar days after the City Manager notifies the Grantee of the default (or such longer period as may be required to encompass an extended cure period), the City Council shall hold a public hearing to consider whether the Franchise should be revoked, at which time the Grantee and the public will be given an opportunity to be heard and Grantee to present evidence for consideration by the City Council.

(3) Following the close of the public hearing the City Council may determine whether to revoke the Franchise. If the Grantee was entitled to an opportunity to cure a default, the Franchise may not be revoked if the default was fully cured during the cure period, including by

payment of all damages and penalties owed. If the City Council determines to revoke the Franchise, it will issue a written decision setting forth the reasons for its decision.

(4) A copy of such decision will be transmitted to the Grantee.

(B) Rights upon Franchise termination or revocation. If the City revokes the Franchise or the Franchise otherwise terminates, the City shall have the following rights, in addition to the rights specified in this Franchise or under applicable law:

(1) The City may require the former Grantee to remove its facilities and equipment at the former Grantee's expense. If the former Grantee fails to do so within a reasonable period of time, the City may have the removal done at the former Grantee's and/or surety's expense, subject to any right of abandonment that may be provided for under applicable law.

(2) The City, by City Council resolution, may acquire ownership or effect a transfer of the Cable System in accordance with 47 U.S.C. § 547.

(3) Section 19 (B)(2) does not apply to an abandonment. If a Cable System or any part thereof is abandoned by Grantee, the City may require the Grantee to transfer title to the abandoned portions to it at no charge, free and clear of encumbrances, and the same will become the City's property and the City may keep, sell, assign, or transfer all or part of the assets of the Cable System, or otherwise dispose of those assets as it sees fit.

(C) Termination in the event of bankruptcy. This Franchise will terminate automatically by force of law 180 calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Grantee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. However, the Franchise may be reinstated within that 180 day period, if:

(1) Such assignment, receivership or trusteeship has been vacated; or

(2) Such assignee, receiver or trustee has fully complied with the terms and conditions of this Franchise, and has executed an agreement, approved by any court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this Franchise. In the event of foreclosure or other judicial sale of any of the facilities, equipment or property of Grantee, the City may revoke the Franchise following a public hearing before the City Council, by serving notice upon the Grantee and the successful bidder at the sale, in which event the Franchise and all rights and privileges thereunder will be revoked and will terminate 30 calendar days after serving such notice, unless:

(a) The City has approved the transfer of the Franchise to the successful bidder; and

(b) The successful bidder has covenanted and agreed with the City to assume and be bound by the terms and conditions of the Franchise.

(D) Effect of termination or forfeiture. Upon termination or forfeiture of this Franchise, whether by action of the City as provided above, or by passage of time, the City may do one or a combination of the following:

(1) Grantee must, should the City so direct, stop using the Cable System for the purposes authorized by the Franchise.

(2) The City may require the former Grantee to remove all or a portion of its facilities and equipment at the former Grantee's expense, subject to any right Grantee may have to abandon property in place. If the former Grantee fails to remove its property within a reasonable period of time, the City may have the removal done at the former Grantee's and/or surety's expense.

(3) The City, by resolution of the City Council, may acquire ownership or effect a transfer

of all or a portion of the Cable System in accordance with 47 U.S.C. 547. Grantee shall execute such deeds and other papers as are necessary to transfer ownership to the City, free and clear of all encumbrances. Determination of fair market value shall be established by appraisal, with one appraiser appointed by the City, one by the Grantee, and a third by the two appraisers.

(4) Notwithstanding the foregoing, the City may not, pursuant to this section, issue an order that violates 47 U.S.C. § 541(b)(3)(c).

Section 20. MISCELLANEOUS PROVISIONS.

(A) Compliance with laws. The Franchisee shall comply with all applicable federal, state and local laws and regulations as they become effective, unless otherwise stated herein.

(B) Governing law. This franchise shall be governed and construed in accordance with the statutes and laws of the state of New Mexico.

(C) No pledging of City's credit. Under no circumstances shall Franchisee have the authority or power to pledge the credit of City or incur any obligation in the name of City. Franchisee shall save and hold harmless the City, its City council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Franchisee under this franchise.

(D) Venue. In the event that suit shall be brought by either party, the parties agree that venue shall be exclusively vested in the Fifth Judicial District Court, State of New Mexico or, where otherwise appropriate, exclusively in the United States District Court for the district of New Mexico.

(E) Force majeure. The Franchisee shall not be deemed in default with provisions of its franchise where performance was rendered impossible by war or riots, civil disturbances, floods or other natural catastrophes beyond the Franchisee's control or the unforeseeable unavailability of labor or materials. The acts or omissions of affiliates are not beyond the Franchisee's control, and the knowledge of affiliates shall be imputed to Franchisee. The franchise shall not be revoked or the Franchisee penalized for such noncompliance, provided that the Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its franchise without unduly endangering the health, safety and integrity of the Franchisee's employees or property, or the health, safety and integrity of the public, public Rights-of-Way, public property, or private property.

(F) Notices. Unless otherwise expressly stated herein, notices required under this franchise shall be mailed first class, postage prepaid, or sent overnight delivery to the addressees below. Each party may change its designee by providing written notice to the other party, but each party may only designate one entity to receive notice.

(1) Notices to the Franchisee shall be mailed to:

Cable One, Inc.
General Manager
2004 S. Sunset
Roswell, New Mexico 88203

Copies of any notice to the Franchisee must also be given to:

Vice President and General Counsel
Cable One, Inc.

210 E. Earll Drive,
Phoenix, AZ 85012

(2) Notices to the City shall be mailed to:

Mayor
City of Roswell
P.O. Box 1838
Roswell, New Mexico 88202-1838

Copies of any notice to the City must also be given to:

City Attorney
P.O. Box 1838
Roswell, New Mexico 88202-1838

(G) Calculation of time. Unless otherwise indicated, when the performance or doing of any act, duty, matter or payment is required hereunder and a period of time or duration for the completion thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration/time.

(H) Time of essence; maintenance of records of essence. In determining whether the Franchisee has substantially complied with its franchise, the parties agree that time is of the essence to this franchise. The maintenance of records and provision of reports in accordance with the franchise is also of the essence to this franchise.

(I) Captions. The captions and headings of this franchise are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this franchise.

~~SECTION 21. REPEALER.~~ ~~City Ordinances 995, 1057, 1116, and 1184 are hereby repealed.~~

SECTION 22. SEVERABILITY CLAUSE.

If any section, paragraph, sentence, clause, word or phrase of this Ordinance is for any reason held to be illegal, unconstitutional, invalid or unenforceable by a court, agency or legislature of competent jurisdiction, said provision shall be considered a separate, distinct, and independent part of this Franchise, and such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this Ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid. In the event that a court or agency or legislature of competent and controlling jurisdiction acts so that any material provision of this agreement is unenforceable according to its terms, or is otherwise void, the parties agree to immediately enter into negotiations in good faith to restore the relative burdens and benefits of this franchise. If the parties are unable to agree to a modification of this franchise within sixty (60) days, either party may with ninety (90) days prior notice, terminate or shorten the franchise term; or resort to litigation to seek any available equitable relief; or do both. Each party agrees to participate in up to sixteen (16) hours of negotiation during the sixty (60) day period. Notwithstanding the foregoing, if a party believes a provision is not material, it must so notify the other party within fourteen (14) days of a request by such other party that it enter into negotiations, or else the

materiality claim is waived. The obligation to negotiate is not tolled, and the parties must discharge their negotiation responsibility notwithstanding the dispute as to materiality. The remedies provided for herein do not prevent a party from contending that a particular provision is enforceable, or foreclose any remedies if a provision is enforceable.

SECTION 23. COMPILATION

This Ordinance shall be incorporated in and made part of the Ordinances of the City of Roswell.

SECTION 24. EFFECTIVE DATE

This Ordinance shall take effect five (5) days after publication in full.

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 25.

Meeting Date: 03/10/2016

COMMITTEE: Legal

CONTACT: William Zarr

CHAIR: Jason Perry

ACTION REQUESTED:

Proposed Ordinance 16-07 - Request to advertise for a public hearing on Proposed Ordinance 16-07 - Convention Center Fees Ordinance. (Perry/Zarr)

BACKGROUND:

Proposed Ordinance No. 16-07 will amend Ordinance No. 13-09 of the Roswell City Code, by renumbering the ordinance as part of the Roswell City Code, and also by amending the ordinance to improve the overall form of the ordinance.

In its present form, the ordinance simply reiterates the state enabling statute. The proposed amendments will make the ordinance more specific to the City of Roswell, to better reflect the intention of the governing body when Ordinance No. 13-09 was adopted.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

Not applicable.

LEGAL REVIEW:

The City Attorney has reviewed Proposed Ordinance 16-07.

BOARD AND COMMITTEE ACTION:

The Legal Committee recommended advertising Proposed Ordinance 16-07 at its meeting held on February 25, 2016.

STAFF RECOMMENDATION:

City Council consideration of authorization to advertise a public hearing on Proposed Ordinance 16-07.

Attachments

Proposed Ordinance 16-07 Convention Center

PROPOSED ORDINANCE NO. 16-07

AN ORDINANCE AMENDING ORDINANCE NO 13-09 BY RENUMBERING THE SECTIONS OF SAID ORDINANCE AS PART OF THE ROSWELL CITY CODE AND AMENDING VARIOUS PROVISIONS OF SAID ORDINANCE

WHEREAS, it appears that when the City Council adopted Ordinance No. 13-09 and imposed the Convention Center Fee pursuant to the authority of NMSA 1978 §5-13-1 et seq., it adopted what is essentially a version of the enabling legislation as the City's ordinance; and

WHEREAS, the amendments contained in this Ordinance will improve the current ordinance consistent with the intention of the Governing Body when it enacted Ordinance No. 13-09 to establish the convention center fee:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL AS THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO, that:

SECTION 1. Section 1 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-70 of the Roswell City Code, and amending that section to read as follows:

Section ~~1~~ 23-70. ~~Short Title~~.

This article may be cited as the "City of Roswell Convention Center Financing ~~Act~~ Ordinance."

SECTION 2. Section 2 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-71 of the Roswell City Code, and amending that section to read as follows:

Section ~~2~~ 23-71. Definitions.

{The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:}

City means the City of Roswell.

Convention center includes a civic center or similar facility intended for public use owned or operated by the City.

Convention center fee means the fee imposed by ~~a local governmental entity~~ the City pursuant to the Convention Center Financing Act on vendees for the use of lodging facilities.

Convention Center Financing Act refers to the statutes set forth in NMSA 1978 Chapter 5, Article 13.

~~Local government entity means a qualified municipality or a county authorized by the Convention Center Financing Act to impose convention center fees.~~

Lodging facility means a hotel, motel or motor hotel, a bed and breakfast facility, an inn, a resort, or other facility offering rooms for payment of rent or other consideration located within the City.

~~Qualified municipality means an incorporated municipality.~~

Room means a unit of a lodging facility, such as a hotel room.

Vendee means a person who rents or pays consideration to a vendor for use of a room in the City.

Vendor means a person or the person's agent who furnishes rooms for occupancy for consideration in the City.

SECTION 3. Section 3 of Ordinance No. 13-09 is hereby deleted in its entirety

~~Section 3. Authorized local governmental entities.~~

~~(a) The following local governmental entities are authorized to impose convention center fees:~~

~~(1) A qualified municipality if the governing body of the qualified municipality has enacted an ordinance to impose a convention center fee; and~~

~~(2) A county in which a qualified municipality is located, provided that:~~

~~a. A qualified municipality within the county has enacted an ordinance to impose a convention center fee;~~

~~b. The board of county commissioners of the county has enacted an ordinance to impose a convention center fee;~~

~~c. The qualified municipality and the county have entered into a joint powers agreement pursuant to the Joint Powers Agreements Act to collect the revenue from the convention center fee and to expend the revenue as required in the Convention Center Financing Act; and~~

~~d. The fee shall only apply to lodging facilities located within 20 miles of the corporate limits of the qualified municipality.~~

~~(b) Two qualified municipalities may enter into a joint powers agreement pursuant to the Joint Powers Agreements Act to collect revenue from a convention center fee and to expend the revenue as required by the Convention Center Financing Act if the municipalities:~~

~~(1) Are located in the same county within 20 miles of the corporate limits of each other; and~~

~~(2) Have each enacted an ordinance to impose a convention center fee.~~

SECTION 4. Section 4 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-72 of the Roswell City Code, and amending that section to read as follows:

Section 423-72. Imposition of convention center fee—Use of proceeds.

- (a) ~~A local governmental entity may impose by ordinance a fee~~ is hereby imposed on the use of a room within a lodging facility within the ~~local governmental entity City~~. The fee may which shall be referred to as the "convention center fee." The amount of the convention center fee shall ~~not exceed~~ is set at \$2.50 per room for each day the room is occupied by a vendee.
- (b) ~~A~~ The convention center fee imposed pursuant to this section shall be reviewed by the City's governing body of the local governmental entity annually. The local governmental entity shall adjust the amount of the convention center fee by ordinance to result in an amount of revenue equivalent to the following percentage of the actual operating and maintenance costs for the preceding fiscal year of the convention center to which the revenue from the fee is dedicated pursuant to subsection (e) of this section:
- (1) Through fiscal year 2025, 120%;
 - (2) For fiscal year 2026, 100%; and
 - (3) The fiscal year 2027 and subsequent fiscal years, a percentage that is 2% less than the prior fiscal year.
- (c) ~~If convention center fees imposed are subject to the provisions of a joint powers agreement between two local governmental entities, the local governmental entities that are parties to the joint powers agreement shall jointly determine changes in the rate of convention center fees to be imposed.~~
- (d) ~~A qualified municipality~~ The City shall not decrease the convention center fee while revenue bonds to which the revenue of the convention center fees is pledged remain outstanding.
- (e) ~~A local governmental entity shall dedicate~~ The revenue from the convention center fee shall be dedicated as provided in this subsection at the time that the ordinance imposing the fee is enacted. ~~A local governmental entity that is a party to a joint powers agreement regarding the imposition of a convention center fee shall enact an ordinance that includes the provisions stated in the joint powers agreement and limit the use of the revenue limited to the following:~~
- (1) Costs of acquisition of land for and the design, construction, equipping, furnishing, landscaping, operation, and maintenance of a convention center located within the ~~qualified municipality~~ City;
 - (2) Payments of principal, interest, or prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by the Convention Center Financing Act; and
 - (3) Costs of collecting and otherwise administering the convention center fee; provided that administration costs shall not be paid until all required payments on the revenue bonds issued pursuant to the Convention Center Financing Act are made and that no more than 5% of the revenue collected in any fiscal year shall be used to pay administration costs.

SECTION 5. Section 5 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-73 of the Roswell City Code, and amending that section to read as follows:

Section ~~5~~23-73. Exemptions.

The convention center fee shall not apply:

- (1) If a vendee:
 - a. Has been a permanent resident of the lodging facility for a period of at least 30 consecutive days; or
 - b. Enters into or has entered into a written agreement for a room at lodging facility for a period of at least 30 consecutive days;
- (2) If the local governmental entity by ordinance exempts lodging facilities whose maximum daily room charge is less than the amount stated in the ordinance;
- (3) To rooms at institutions of the federal government, the state or any political subdivision thereof;
- (4) To rooms at religions, charitable, educational, or philanthropic institutions or other nonprofit organizations, including rooms at summer camps operated by such institutions;
- (5) To clinics, hospitals, or other medical facilities;
- (6) To privately owned and operated convalescent homes or homes for the aged, infirm, indigent, or chronically ill; or
- (7) If the vendor does not offer at least three rooms at its lodging facility. The convention center fee shall be imposed on the lodging facilities of a vendor that owns three or more lodging facilities within ~~local governmental entities that have imposed a convention center fee~~ the City, regardless of the number of rooms available for occupancy.

SECTION 6. Section 6 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-74 of the Roswell City Code, and amending that section to read as follows:

Section ~~6~~23-74. Collection of convention center fee.

- (a) A vendor providing rooms ~~in a local governmental entity that has imposed a convention center fee~~ shall collect the proceeds on behalf of the ~~local governmental entity~~ the City and shall act as a trustee for the fees collected.
- (b) The convention center fee shall be collected from vendees in accordance with the ordinance imposing the convention center fee and shall be accounted for separately from the rent fixed by the vendor for rooms.

SECTION 7. Section 7 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-75 of the Roswell City Code, and amending that section to read as follows:

Section ~~7~~23-75. 7-167. Audit of vendors.

~~A local governmental entity assessing a convention center fee~~ The City shall include verification of the collection of the correct convention center fee in any audit of a vendor conducted pursuant to NMSA 1978, § 3-38-17.1.

SECTION 8. Section 8 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-76 of the Roswell City Code, and amending that section to read as follows:

Section 8 ~~23-76~~. Financial reporting.

~~The chief executive officer of a local governmental entity assessing a convention center fee~~ City Manager shall report to the local government division of the department of finance and administration on a quarterly basis any expenditure of convention center fee funds.

SECTION 9. Section 10 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-77 of the Roswell City Code, and amending that section to read as follows:

Section ~~10~~ 23-77. Collection of delinquencies.

- (a) ~~A local governmental entity shall by ordinance provide that a vendor is~~ shall be liable for the payment of the proceeds of convention center fees that the vendor failed to remit to the local governmental entity. Failure of the vendor to collect the fee is not cause for ~~local governmental entity the City~~ to forgive convention center fees due and owed by the vendor. ~~The ordinance shall provide for a civil penalty f~~ For each occurrence of failure to remit convention center fees, a vendor shall pay a civil penalty in an amount equal to the greater of 10% of the amount that was not duly remitted to the ~~local governmental entity City~~ or \$100.00.
- (b) ~~The local governmental entity City may bring an action in the district court of the judicial district in which the local governmental entity is located~~ for collection of amounts due, including without limitation, penalties on the amounts due on the unpaid principal at the rate not exceeding 1% per month, the costs of collection, and reasonable attorney fees incurred in connection with the court action to collect the unpaid convention center fees.

SECTION 10. Section 11 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-78 of the Roswell City Code, and amending that section to read as follows:

Section ~~11~~ 23-78. Lien for convention center fee—Payment—Certificate of lien.

- (a) The convention center fee assessed by ~~a local governmental entity~~ the City constitutes a lien in favor of ~~that local governmental entity the City~~ upon the personal and real property of the vendor providing lodging facilities in ~~that local governmental entity the City~~. The lien may be enforced as provided in NMSA 1978, §§ 3-36-1 through 3-36-7. Priority of the lien shall be determined from the date of filing.
- (b) Under process or order of court, a person shall not sell the property of a vendor without first ascertaining from the clerk or treasurer of the ~~local governmental entity in which the vendor is located the City~~ the amount of any convention center fees due. Convention

center fees due the ~~local governmental entity~~ City shall be paid from the proceeds of the sale before payment is made to the judgment creditor or any other person with a claim on the sale proceeds.

- (c) The clerk or treasurer of the ~~local governmental entity~~ the City shall furnish a certificate of lien to a person applying for a certificate showing the amount of all liens in the records of the ~~local governmental entity~~ the City against any vendor pursuant to the Convention Center Financing Act Ordinance.

SECTION 11. Section 12 of Ordinance No. 13-09 is hereby deleted in its entirety.

~~Section 11. Ordinance requirements.~~

~~The ordinance imposing a convention center fee or any ordinance amending the imposition of a convention center fee shall:~~

~~(1) State:~~

- ~~a. The rate of the convention center fee to be imposed;~~
 - ~~b. The times, place, and method for the payment of the convention center fee proceeds to the local governmental entity;~~
 - ~~c. The accounts and other records to be maintained in connection with the convention center fee;~~
 - ~~d. A procedure for making refunds and resolving disputes relating to the convention center fee;~~
 - ~~e. The procedure for preservation and destruction of records and for their inspection and investigation;~~
 - ~~f. Vendor audit requirements;~~
 - ~~g. Applicable civil and criminal penalties; and~~
 - ~~h. A procedure of liens, distraint and sales to satisfy those liens; and~~
- ~~(b) Provide other rights, privileges, powers, immunities, and other details relating to the collection of the convention center fee and the remittance of the proceeds thereof to the local governmental entity.~~

SECTION 12. Section 13 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-80 of the Roswell City Code, and amending that section to read as follows:

Section ~~13~~ 23-80. Revenue bonds.

- (a) Pursuant to the provisions of the Convention Center Financing Act, the City may issue R revenue bonds may be issued at any time by a qualified municipality that has imposed a convention center fee the City to defray wholly or in part the costs authorized in section 23-72(e) 7-164(e)(1) of the Convention Center Financing Act. The revenue bonds may be payable from and payment may be secured by a pledge of and lien on the revenue derived from:

- (1) The proceeds of the convention center fee of the ~~qualified municipality~~ City and the proceeds of the convention center fee of a local governmental entity that has entered into a joint powers agreement with the ~~qualified municipality~~ City to impose a convention center fee, the proceeds of which shall be dedicated to the payment of revenue bonds for a convention center in the ~~qualified municipality~~ City;
 - (2) A convention center to which the bonds pertain, after provision is made for the payment of the operation and maintenance expenses of the convention center;
 - (3) That portion of the proceeds of the occupancy tax of the ~~qualified municipality~~ City available for payment of revenue bonds pursuant to NMSA 1978, § 3-38-56B(1);
 - (4) Any other legal available revenues of the ~~qualified municipality~~ City; or
 - (5) A combination of revenues from sources designated in subsections (1) through (4) of this subsection.
- (b) The bonds shall bear interest at a rate or rates as authorized in the Public Securities Act, and the first interest payment may be for any period authorized in the Public Securities Act.
 - (c) Except as otherwise provided in the Convention Center Financing Act, revenue bonds authorized in that act shall be issued in accordance with the provisions of NMSA 1978, §§ 3-31-2 through 3-31-6.

SECTION 13. Section 14 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-81 of the Roswell City Code, and amending that section to read as follows:

Section 14 ~~23-81~~.Refunding bonds.

- (a) ~~A qualified municipality~~ The City, having issued revenue bonds as authorized in the Convention Center Financing Act, may issue refunding revenue bonds payable from pledged revenues authorized for the payment of revenue bonds at the time of the refunding or at the time of the issuance of the bonds being refunded as the governing body of the ~~qualified municipality~~ City may determine, notwithstanding that the revenue sources or the pledge of such revenues or both are thereby modified.
- (b) Refunding bonds may be issued for the purpose of refinancing, paying, and discharging all or a part of outstanding bonds of any one or more outstanding bond issues:
 - (1) For the acceleration, deceleration, or other modification of the payment of the obligations, including any capitalization of any interest in arrears or about to become due for any period not exceeding one year from the date of the refunding bonds;
 - (2) For the purpose of reducing interest costs or effecting other economies;
 - (3) For the purpose of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds or otherwise concerning the outstanding bonds; or

- (4) For any combinations of the purposes specified in subsections (1) through (3) of this section.
- (c) The interest on a bond refunded shall not be increased to a rate in excess of the rate authorized in the Public Securities Act and shall be paid as authorized in the act.
- (d) Refunding bonds for any other purpose permitted by the Convention Center Financing Act may be issued separately or issued in combination in one series or more.
- (e) Except as otherwise provided in the Convention Center Financing Act, refunding bonds authorized in that act shall be issued in accordance with the provisions of NMSA 1978, §§ 3-31-10 and 3-31-11.

SECTION 14. Section 15 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-82 of the Roswell City Code, and amending that section to read as follows:

Section 15 ~~23-82~~. Penalties.

~~A local governmental entity shall by ordinance provide for penalties by creating a misdemeanor and imposing a fine of not more than \$500.00 or imprisonment of not more than 90 days or both for a violation by any person of the provisions of the convention center fee ordinance for a failure to pay the fee or to remit the proceeds thereof to the local governmental entity.~~

Any person who is a vendor under the provisions of this Ordinance and who fails to pay the fees or to remit the proceeds to the City shall be punished by a fine not to exceed \$500, or by a term of imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment.

SECTION 15. Section 9 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-83 of the Roswell City Code, and amending that section to read as follows:

Section 9 ~~23-83~~ Enforcement.

- ~~(a) An action to enforce the Convention Center Financing Act may be brought by:

 - ~~(1) The attorney general or the district attorney in the county of jurisdiction; or~~
 - ~~(2) A vendor who is collecting the proceeds of a convention center fee in the county of jurisdiction.~~~~
- ~~(b) A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Convention Center Financing Act.~~
- ~~(c) The court shall award costs and reasonable attorney fees to the prevailing party in a court action to enforce the provisions of the Convention Center Financing Act.~~

The provisions of this Convention Center Financing Ordinance may be enforced as provided under NMSA 1978 §5-13-9.

SECTION 16. All ordinances or parts of ordinances in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or part of any ordinance heretofore repealed.

SECTION 17. If any section, paragraph, clause or provisions of this ordinance for any reason shall be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any other part of this ordinance.

SECTION 18. This ordinance shall be effective after five (5) days following its publication as required by law.

Underscoring indicates addition to existing Code section.

~~Strike through~~ indicates delete of an existing Code section.

PASSED, ADOPTED, SIGNED and APPROVED the 14th day of April, 2016.

CITY SEAL

Dennis Kintigh, Mayor

ATTEST:

Sharon Coll, City Clerk

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 26.

Meeting Date: 03/10/2016

COMMITTEE:

CONTACT: Monica Garcia

CHAIR: Caleb Grant

ACTION REQUESTED:

Request approval of the Audited Financial Statements for Fiscal Year Ending June 30, 2015. (Garcia/Grant)

BACKGROUND:

The State Auditor's Rule requires that the final audit report and financial statement be presented and accepted by the governing authority of an agency at a public meeting.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

Not applicable.

LEGAL REVIEW:

Not applicable.

BOARD AND COMMITTEE ACTION:

The Finance Committee approved acceptance of the Audited Financial Statements for Fiscal Year Ending June 30, 2015.

STAFF RECOMMENDATION:

City Council consideration of audited financial statements for Fiscal Year Ending June 30, 2015.

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Regular City Council Meeting

Item No. 27.

Meeting Date: 03/10/2016

COMMITTEE: N/A

CONTACT: Sharon Coll

CHAIR: N/A

ACTION REQUESTED:

- Gross Receipts Tax - February 2016
- Lodgers' Tax
- Human Resources
- Animal Control
- Police Department
- Fire Department
- Code Enforcement
- Roswell Public Library
- Convention Center Maintenance
- Convention Center Expense
- Convention Center Activity
- Visitor's Bureau

BACKGROUND:

Department reports.

FINANCIAL CONSIDERATION (See Fiscal Impact below)

Not applicable.

LEGAL REVIEW:

Not applicable.

BOARD AND COMMITTEE ACTION:

Not applicable.

STAFF RECOMMENDATION:

Not applicable.

Attachments

Gross Receipts Tax
Lodgers' Tax
Animal Control
Police Department
Fire Department
Code Enforcement
HR Department Feb.
Convention Center Expense
Convention Center Activity
Convention Center Maintenance
Visitors' Bureau

**CITY OF ROSWELL
GROSS RECEIPTS TAX REPORT FY16
FEBRUARY 2016**

THIS MONTH'S
CHECK

\$2,391,951.90

LAST MONTH'S
CHECK

\$2,293,590.95

THIS MONTH'S
CHECK
1 YEAR AGO

\$2,911,146.44

2015 FISCAL YEAR
COLLECTIONS TO DATE

\$20,569,318.50

2016 FISCAL YEAR
COLLECTIONS TO DATE

\$19,256,777.05

YEAR TO DATE

LAST YEAR (FEBRUARY 2015)

LAST MONTH (JANUARY 2016)

BUDGETED INCREASE FOR FISCAL YEAR 2016

PERCENT VS BUDGETED AMOUNT

-6.38%

-17.83%

4.29%

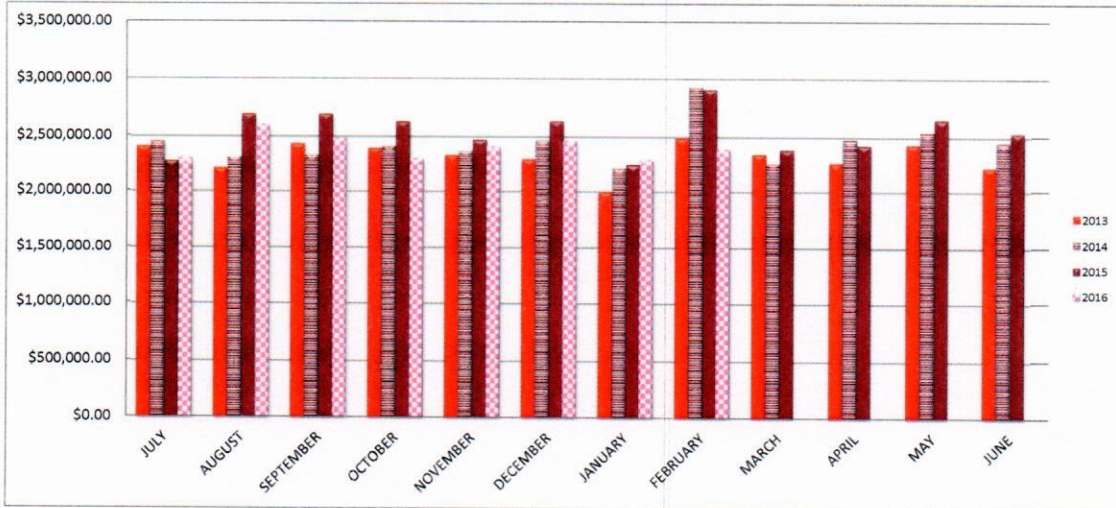
0.5%

-6.88%

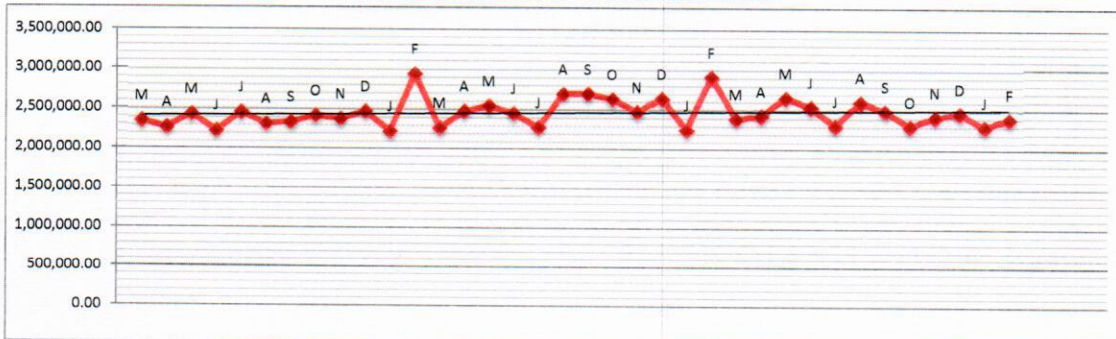
ACTUAL GROSS RECEIPTS TAX RECEIVED

	Fiscal 2013	Fiscal 2014	Fiscal 2015	Fiscal 2016
JULY	\$2,411,603.33	\$2,456,299.54	\$2,276,972.79	\$2,302,833.20
AUGUST	2,214,879.40	2,317,234.25	2,695,926.14	2,600,775.56
SEPTEMBER	2,435,316.19	2,337,660.35	2,695,359.27	2,489,037.09
OCTOBER	2,398,219.78	2,416,541.63	2,632,327.18	2,300,185.71
NOVEMBER	2,333,992.18	2,377,565.87	2,473,024.72	2,416,633.33
DECEMBER	2,298,027.78	2,470,059.94	2,637,083.83	2,461,769.31
JANUARY	1,996,326.28	2,223,551.93	2,247,478.13	2,293,590.95
FEBRUARY	2,490,225.25	2,941,276.82	2,911,146.44	2,391,951.90
MARCH	2,349,737.54	2,266,645.09	2,387,102.40	
APRIL	2,268,112.82	2,476,673.68	2,425,986.73	
MAY	2,434,954.33	2,540,623.58	2,653,762.48	
JUNE	2,229,736.02	2,450,030.17	2,536,492.00	
TOTAL	\$27,861,130.90	\$29,274,162.85	\$30,572,662.11	\$19,256,777.05

COMPARISON OF ACTUAL RECEIPTS



GROSS RECEIPTS TAX - THREE YEAR TREND



**CITY OF ROSWELL
LODGERS' TAX REPORT - FY 16
FEBRUARY 2016**

THIS MONTH'S
TAXES RECEIVED

\$74,869.10

LAST MONTH'S
TAXES RECEIVED

\$66,389.60

THIS MONTH'S
TAXES RECEIVED
1 YEAR AGO

\$90,900.30

2015 FISCAL YEAR
COLLECTIONS TO DATE

\$762,434.43

ESTIMATED
PENDING FY16
COLLECTIONS

\$39,723.98

2016 FISCAL YEAR
COLLECTIONS TO DATE

\$675,195.47

YEAR TO DATE

LAST YEAR (FEBRUARY 2015)

-11.44%

LAST MONTH (JANUARY 2016)

-17.64%

BUDGETED DIFFERENCE FROM FISCAL YEAR 2015 ACTUAL

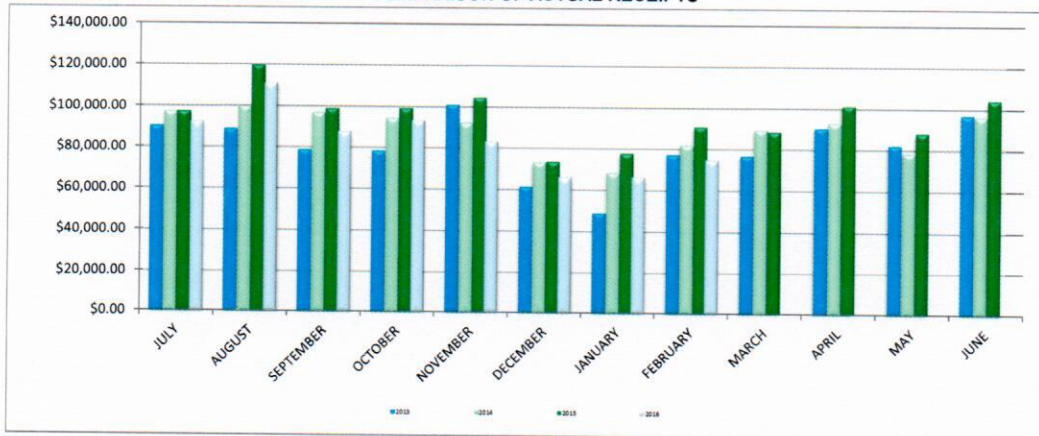
12.77%

-1.56%

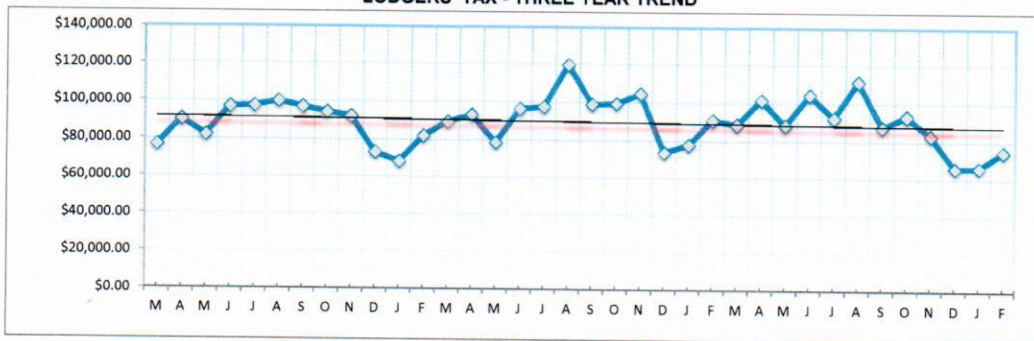
ACTUAL LODGERS' TAX RECEIVED

	Fiscal 2013	Fiscal 2014	Fiscal 2015	Fiscal 2016
JULY	\$90,300.33	\$97,457.04	\$97,411.08	\$92,243.43
AUGUST	88,793.82	99,919.54	119,690.78	111,352.47
SEPTEMBER	78,930.96	97,009.21	98,916.48	87,638.24
OCTOBER	78,633.40	94,330.06	99,236.39	93,266.12
NOVEMBER	101,235.86	92,167.32	104,505.66	83,360.96
DECEMBER	61,663.08	73,349.46	73,815.42	66,075.55
JANUARY	49,134.39	68,455.83	77,958.32	66,389.60
FEBRUARY	77,563.48	82,128.65	90,900.30	74,869.10
MARCH	77,103.81	89,411.65	88,540.91	
APRIL	90,423.37	93,015.35	101,407.00	
MAY	82,396.46	78,592.18	88,272.53	
JUNE	96,994.71	96,268.38	104,358.62	
	\$973,173.67	\$1,062,104.67	\$1,145,013.49	\$675,195.47

COMPARISON OF ACTUAL RECEIPTS



LODGERS' TAX - THREE YEAR TREND



**JANUARY 2016'S
EVENTS:**

RAC Saturday Night Dance, Golith, the 20 year Snow Storm (Travelers were stranded in Roswell) Gun Show, Eddie Griffin Show, There were no events paid in part by Lodgers' Tax

EVENTS PAID IN PART BY LODGERS' TAX INDICATED IN BLUE, CONVENTION CENTER EVENTS IN GREEN

**ROSWELL POLICE DEPARTMENT
ANIMAL CONTROL
February 2016**

	THIS MONTH	THIS MONTH LAST YEAR	YEAR TO DATE	LAST YEAR TO DATE	% Change (+/-)
ANIMAL INTAKE					
<i>Dogs</i>	269	304	570	582	-2.06%
<i>Cats</i>	100	118	206	221	-6.79%
<i>Other</i>	3	9	4	10	-60.00%
<i>Returns</i>	3	9	4	15	-73.33%
INTAKE TOTAL	375	440	784	828	-5.31%

ADOPTIONS					
<i>Private Adoptions</i>	61	67	128	140	-8.57%
<i>Dogs</i>	59	51	116	113	2.65%
<i>Cats</i>	1	14	9	25	-64.00%
<i>Other</i>	1	2	3	2	50.00%
<i>Roswell Humane Society Adoptions</i>	25	23	30	34	-11.76%
<i>Dogs</i>	21	23	26	33	-21.21%
<i>Cats</i>	4	0	4	1	300.00%
<i>Other</i>	0	0	0	0	0.00%
<i>Rescue Adoptions</i>	121	152	317	280	13.21%
<i>Dogs</i>	98	130	266	219	21.46%
<i>Cats</i>	23	22	51	61	-16.39%
<i>Other</i>	0	0	0	0	0.00%
ADOPTIONS TOTAL	207	242	475	454	4.63%

RECLAIMS					
<i>Dogs</i>	83	67	142	129	10.08%
<i>Cats</i>	2	1	4	5	-20.00%
<i>Other</i>	3	0	3	0	0.00%
RECLAIMS TOTAL	88	68	149	134	11.19%

EUTHANASIA					
<i>Dogs</i>	19	46	40	77	-48.05%
<i>Cats</i>	4	12	10	29	-65.52%
<i>Feral Cats</i>	61	64	101	87	16.09%
<i>Feral Kittens</i>	6	6	10	15	-33.33%
<i>Other</i>	0	3	0	3	-100.00%
EUTHANASIA TOTAL	90	131	161	211	-23.70%

MISC DISPOSTION (Dead, Stolen, Missing)	0	0	0	0	0.00%
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ALL OTHER					
<i>DOA</i>	52	53	171	121	41.32%
<i>DOA Vet</i>	15	27	31	59	-47.46%
<i>Dog Bites</i>	3	2	5	5	0.00%
<i>Cat Bites</i>	0	2	0	2	-100.00%

TOTAL CALLS	960	931	1,855	1,984	-6.50%
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Prepared by Georgia Davey
2-Mar-16

Philip Smith, Chief of Police

**ROSWELL POLICE DEPARTMENT
MONTHLY REPORT
February 2016**

CRIMES AGAINST PERSONS	THIS MONTH	THIS MONTH LAST YEAR	YEAR TO DATE	LAST YEAR TO DATE	% Change (+/-)
<i>Murder*</i>	0	0	0	0	0.00%
<i>**Justifiable Homicide</i>	0	0	0	0	0.00%
<i>Criminal Sexual Penetration</i>	1	3	3	6	-50.00%
<i>Robbery</i>	3	4	5	9	-44.44%
<i>Assault</i>	14	8	18	26	-30.77%
<i>Minors-Sexual Penetration</i>	2	2	5	3	66.67%
<i>Minors-Sexual Contact</i>	2	3	5	4	25.00%
<i>Child Abuse</i>	9	4	18	6	200.00%
<i>Crimes Against Persons (Non-Violent)*</i>	122	137	244	257	-5.06%

CRIMES AGAINST HOUSEHOLD MEMBER					
<i>Domestic Violence-Physical Contact</i>	39	21	71	49	44.90%
<i>Domestic Violence-Verbal</i>	45	27	75	42	78.57%

PROPERTY CRIMES					
<i>Burglary</i>	31	41	53	106	-50.00%
<i>Larceny</i>	103	138	222	321	-30.84%
<i>Motor Vehicle Theft</i>	12	10	23	17	35.29%
<i>Criminal Damage</i>	44	50	86	103	-16.50%
<i>Graffiti</i>	2	5	4	12	-66.67%
<i>All Other Crimes Against Property**</i>	33	34	73	64	14.06%

DWI	14	11	32	22	45.45%
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PERSONS ARRESTED	650	520	1332	941	41.55%
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TRAFFIC REPORT					
<i>Fatal Accidents</i>	0	0	0	0	0.00%
<i>Injury Accidents</i>	31	22	54	48	12.50%
<i>Property Damage Only</i>	120	120	287	237	21.10%

<i>Traffic Citations</i>	516	1,530	1,575	2,813	-44.01%
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TOTAL ACTIVITIES					
<i>Officer Initiated</i>	2,389	3,211	4,756	6,093	-21.94%
<i>Calls for Service</i>	2,806	2,563	5,596	5,318	5.23%

*Less Justifiable Homicide ie: self defense, officer involved shootings, etc. **The two numbers combined will reflect the homicide totals shown in Part I Crimes.

Philip Smith, Chief of Police

Prepared by Georgia Davey
2-Mar-16



200 South Richardson Avenue
Roswell, New Mexico 88203
Phone (575) 624-6800
Fax (575) 624-6803

MONTH OF: February 2016

TOTAL EMERGENCY CALLS:		626
Fire	25	
Rescue & EMS	551	
Hazardous Conditions	9	
Service Call	8	
Good Intent	6	
False Alarm	24	
Special Type	3	
Total Dollar Loss Due to Fire		\$328,000.00
Total Dollars Saved		\$92,500.00
Total Hours of Training		961
Total Hours Fire Training	961	
Total Hours EMS Training	0	
Fire Deaths		0
Fire Code Inspections		97
Reviews of Construction Plans		2
Permit Fees Collected		\$0.00
Public Education Speaking Opportunities		
Fires Investigated		6
Total Number of Emergency Calls 2015		8302
Total Number of Emergency Calls 2014		5691
Total Number of Emergency Calls 2013		5442
Total Number of Emergency Calls 2012		7144
Total Number of Emergency Calls 2011		7779
Total Number of Emergency Calls 2010		6788
Total Number of Emergency Calls 2009		6488
Total Number of Emergency Calls 2008		6452

CITY OF ROSWELL
CODE ENFORCEMENT DEPARTMENT
Month: February 2016

CODE ENFORCEMENT	This Month	This Month 2015	YTD*	2015 YTD*
Notices Mailed	514	400	4,538	4,891
Voluntary Compliance	272	195	2,685	3,054
No. of Cases Filed	42	7	147	64
No. Cases Dismissed	3	0	4	9
Resolution	10	19	362	571
Cleaned by City	10	21	254	256
Weeds	110	111	2365	3,311
Inoperable Vehicles	96	32	288	161
Litter	110	88	596	490
Unsanitary Premises	141	70	619	485
Signs	0	73	184	73
Zoning	0	0	35	2
Obstructions	0	9	54	107
Public Nuisances	51	17	230	244
Garage Sales No permit	0	0	116	0

BUSINESS LICENSES	This Month	This Month 2015	YTD*	2015 YTD*
Total Licenses Issued	99	86	1,257	1356
Renewed Licenses	57	42	1,011	1068
New Licenses	28	20	165	193
Temporary Permits Issued	14	24	81	95
Receipts	\$6,872	\$3,352	\$47,106	\$53,978.00

*Figures calculated to reflect FYTD

BUILDING INSPECTIONS	This Month		This Month 2015		YTD*		2015 YTD*	
New Construction	3		2		30		27	
All Other Construction	76		45		429		466	
Total Permits Issued	79		47		459		493	
Total Active Permits	431		425		***		***	
Current Valuation	\$1,358,102		\$3,221,028		\$28,886,889.00		\$20,009,587	
Total Fees Collected	\$15,951		\$24,380		\$169,482.00		\$261,385	

PLUMBING INSPECTIONS	This Month		This Month 2015		YTD*		2015 YTD*	
Plumbing & Gas Permits--New	9	\$657	7	\$756.50	95	\$7,558.50	86	\$8,502.75
Plumbing & Gas Permits—Misc.	17	\$684.50	25	\$1,187.75	222	\$9,276.75	257	\$12,819.25
Gas Line Inspections	14	\$525.50	18	\$580	240	\$6,615	154	\$5,476
Totals	40	\$1,867	50	\$2,524.25	570	\$23,450.25	497	\$26,798

ELECTRICAL INSPECTIONS	This Month		This Month 2015		YTD*		2015 YTD*	
Electric Permits--New	3	\$300	5	\$820	34	\$4,655	46	\$7,255
Electric Permits—Misc.	33	\$1,390	16	\$1,090	330	\$18,090	246	\$14,925
Service Change	10	\$385	10	\$350	97	\$3,775	64	\$2,475
Totals	46	\$2,075	31	\$2,260	461	\$26,520	356	\$24,655

*Figures calculated to reflect FYTD

Signed: _____

C: CE monthly February 2016.docx

City of Roswell, NM

Personnel Changes for the Month of February 2016

Status Legend

RFT - Regular Full-Time

RPT - Regular Part-Time

TFT - Temporary Full-Time

PFT - Probationary Full-Time

PPT - Probationary Part-Time

TPT - Temporary Part-Time

NEW HIRE				
Date	Name	Position	Department	Status
2/1/16	Nesselrodt, Magda T.	Emergency Comm. Dispatcher	Consolidated Dispatch	PFT
2/11/16	Padilla, Andrew G.	YCC - Trainee - Zoo	Parks/Zoo	TFT
2/16/16	Howe, Jeremy	Plantetarium Coordinator	Museum	PFT
2/29/16	Watters, Stephen R.	YCC - Trainee - Zoo	Parks/Zoo	TFT
TRANSFER/PROMOTION/DEMOTION				
Date	Name	Position	Department	Status
2/5/16	Metcalf, Heath	Fire Lieutenant to Battalion Chief	Fire	RFT
2/19/16	Frederick, Cory D.	Museum Attendant (RPT) to Museum Attendant (RFT)	Museum	PFT

EXIT				
Date	Name	Position	Department	Status
2/4/16	Meda II, Ernest F.	Zoo Maintenance Worker, Sr.	Parks/Zoo	RFT
2/10/16	LeMay, John P.	Fire Fighter Recruit	Fire	PFT
2/12/16	Stark-Rankins, Elizabeth	Planner II	Planning & Zoning	RFT
2/16/16	Brantley, Cody T.	Fire Fighter Recruit	Fire	PFT
2/16/16	Strange, Brandon S.	Fire Fighter Recruit	Fire	PFT
2/16/16	Nesselrodt, Magda T.	Emergency Comm. Dispatcher	Consolidated Dispatch	PFT

RETIREMENT				
Date	Name	Position	Department	Status
2/19/16	Penn, Jason L.	Fire Lieutenant	Fire	RFT
2/29/16	Rogers, Timothy W.	Police Officer	Police	RFT



MONTHLY EXPENSE REPORT

FEBRUARY, 2016

CURRENT				
Date	Vendor	Item	PO	Amount
2/1/2016	Farmer Brothers	Supplies	162638	\$97.28
2/1/2016	Carpet Clinic	Lobby Carpet	162545	\$749.00
2/1/2016	Carpet Clinic	Grout Cleaning	162652	\$860.00
2/4/2016	UniFirst	Service	Open	\$79.99
2/5/2016	Polar Refrigeration LLC	Repair Tilt Kettle	162695	\$519.48
2/8/2016	Tractor Supply	Cadet Push Mower	162711	\$399.99
2/11/2016	UniFirst	Service	Open	<u>\$31.28</u>
2/16/2016	Fat Dogs	Mics - Receivers	162635	\$2,586.00
2/17/2016	Office Depot	Office Chair	A89157	\$74.99
2/18/2016	UniFirst	Service	Open	\$87.56
2/19/2016	Pest Control	Service	Open	\$32.25
2/22/2016	Cintas First Aid	Service	162877	\$64.81
2/22/2016	Builders Do It Center	Spackling	A89158	\$30.98
2/23/2016	Farmer Brothers	Supplies	162910	\$45.46
2/24/2016	Builders Do It Center	Ceiling Panels	A89159	\$64.48
2/25/2016	UniFirst	Service	Open	\$44.33
2/25/2016	Alpha Omega Printing	Business Cards	162579	\$76.50
Current Total:				\$5,844.38

Pending				
Date	Vendor	Item	PO	Amount
Pending:				\$0.00





GOALS/ACTIVITY AND MONTHLY MAINTENANCE REPORT

February, 2016

Facilities Maintenance

Maintenance Staff had to tape and texture a portion of the ceiling and wall in the kitchen due to a water leak that flooded the ceiling in the kitchen and entry way into the exhibit hall. Everything including all the appliances and counters, floors located in the south side of the kitchen had to be dried, cleaned polished and sanitized due to the water damage. The compressor for one of the HVAC units on the south east side of the Exhibit Hall was taken in for repair and should be repaired and back in the unit by the middle of February. The steamer in the kitchen is being repaired by Polar Express Inc. A new temperature Probe and thermostat is on ordered for this appliance which is used to steam vegetables and some meats and should be repaired as soon as the Probe comes in. The next cleaning and sanitizing of the Kitchen is scheduled again for the end of this month. Maintenance Staff replaced the furnace filters on all the HVAC units on the entire facility. This requires replacing a total of 70 filters. The filters are changed every 4 to 6 months. Staff constantly stays busy with the events, maintenance, cleaning, and repairs needed at the Center.

Exterior Repair and Maintenance

Staff worked on removing trash and leaves from the entire roof over the Exhibit Hall which will eliminate the down spouts from becoming clogged when it rains or snows. Orlando from Facilities Maintenance started priming the north side exterior wall for the building and will be applying paint when the temperature allows. Orlando will also get a paint match of the existing color. Facilities Maintenance is also working on texture repairs in the lobby and bathrooms on the west side of the building.

Floors and Carpet

The tile and grout in all the entry ways and lobby were chemically cleaned on the 1st of February. Due to all the wear and tear during the year this is done once a year to keep a nice clean appearance. Carpet in the Exhibit Hall was shampooed and scotch guarded on the 24th of December and the restrooms are scheduled to be chemical washed and sanitized the end of February. The cleaning, washing and sanitizing of the tile floors in the center are scheduled on a quarterly basis. Staff keeps up with the spot cleaning as well as stain removal of the tile and carpets in the entire facility before and after events.

Restrooms

Staff and Facilities Maintenance are staying on top of the drains in the Concession Stand and the sewer lines in the ladies restroom on the west side of the lobby. Hoping to eliminate the odor we have been dealing with on the north side of the lobby on windy days.

Fire Alarm System

Old Guard LLC preformed their quarterly test on December 22nd with no problems. Inspection and testing of the fire alarm system has per NFPA and the Office of the Fire Marshal. Testing is done on a quarterly basis and the next test is scheduled for April.

GOALS /ACTIVITY AND MONTHLY MAINTENANCE REPORT FEBRUARY, 2016

Visitors Center

The Visitors Center has been receiving new 2016 brochures with information about the State and the surrounding areas. The center has also received the new and updated Point of Interest Roswell Maps/brochures. Staff calls the hotels and motels to make sure they are fully stocked with the Roswell Day Trip brochures and information about other towns in New Mexico. This month the staff provided the Historical Museum with 200 goodie bags which contain information about Roswell along with a little alien souvenir. We continue to promote all the events in Roswell on the Portales radio on Thursday morning of every week. Staff also continues to update the Visitors Center Facebook on a daily basis to bring attention to events in Roswell. Point of Interest maps have been distributed to the local campgrounds and are also given out to visitors and people inquiring about Roswell. The Visitors Center has received brochures and Visitors Guides from different cities from around New Mexico and some from out of state. Staff at the Visitors Center was able to help with accommodating visitors with 500 hotel rooms for a Diocese retreat that will be held in Roswell the first weekend of June.

Staff

The Events Services Director met with potential event holders and gave them tours of the facility. Staff continues to work on our upcoming event files for March, April and May. The staff prepared additional rental packets as we have recently had an influx of rental inquiries for the facility. During the month of February, 2016 the Roswell Convention Center accommodated a total of 14 event days. Some of the events this month were the All Saints, Mardi Gras, Cowgirls for a cause, Safari Club, and the Baby Boomers Business Expo. The events held this month had an estimated attendance of 3,525 guests. Staff verified that the event calendar for 2016 was up to date. Staff went through the 2016 files and made sure that there was a file for every event on the calendar. The event receptionist updated the security, food, and liquor carters list. A list of decorating do's and don'ts was also added to the information packet.

Ground Maintenance

Convention Center Staff continues to maintain the lawns and parking lot for the Convention Center and Museum along with cleaning under and around all the scrubs and in the parking lot and picking up trash in the spring river on the west side and next to the museum. Staff also maintains the Spring River between the Convention Center and the Museum cleaning and removing weeds and trash.

Museum Ground Maintenance

The Convention Center Staff continues to maintain the lawn at Museum. Winterized the lawn and will manually water the lawn during the winter months. Staff has also been working on the flower beds and plants on the south side of the Museum as time allows.

Roswell Visitor Center

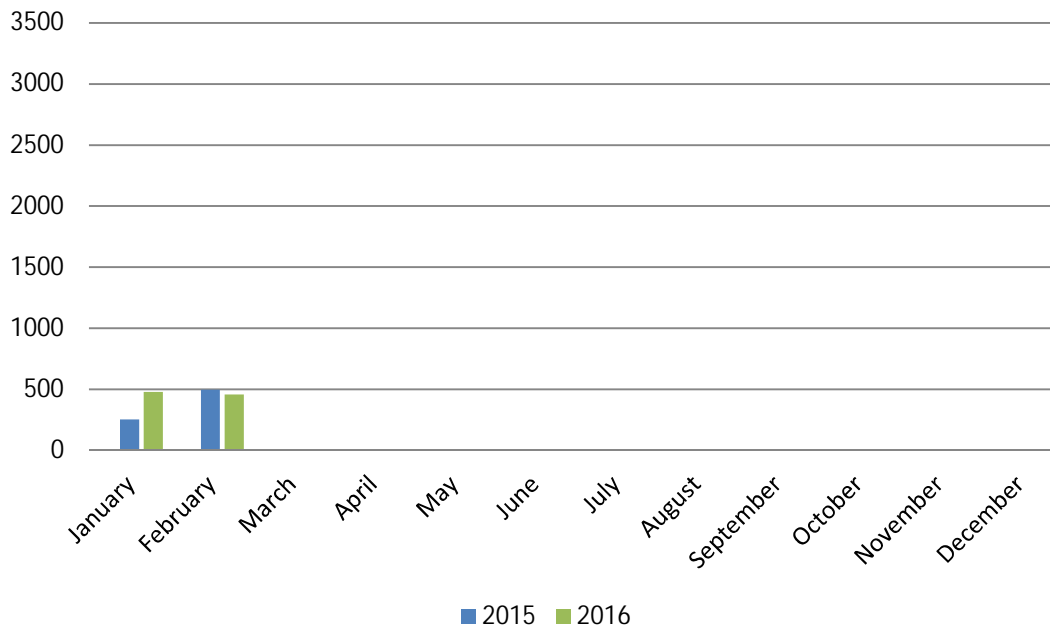
Monthly Report

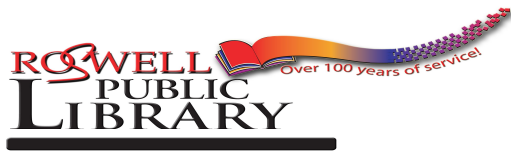
February 2016

	February		Comparison	
	2016YTD	2015YTD	2016YTD	2015YTD
Roswell & 200 mile Radius	63	24	46	1
New Mexico Visitors (not including Roswell Area)	122	6	69	7
US Visitors (not including New Mexico)	324	356	265	202
Foreign Visitors	112	87	165	45
Unknown	14	26	40	0
Totals Visitors	459	499	459	255
Nights Stayed in Roswell	256	137	491	201

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Total Visitors - Comparison





February Report

Building

Work on the roof is scheduled to start on February 22 and the project should be completed around April 8. We are hoping for good weather so that this project can be completed as quickly as possible.

Personnel

Margarita Chavira, Page I in the Circulation Department, celebrated her 1st year anniversary with us this month. Bianca Cheney, Reference Technician, celebrated her 16th Anniversary.

Training

Webinars and training attended by staff were: Creating Easy Promotional Graphics (6), Patron Awareness, the Active Killer Training presented by the Safety Department was attended by 16 staff members.

Classes, tours, school visits, outreach

Twelve Story Times were conducted this month.

Two Basic computer classes were offered this month and four Color Between the Lines sessions were offered as well.

Outreach contacts and information distribution was made with Big Brothers Big Sisters of Southeast New Mexico, Roswell Refuge and Boy Scouts. Visits were made to Park View by the Children's Department staff.

Members of the Goddard High School Key Club participated in a Reading Extravaganza on Saturday, February 20th. They manned several reading stations around the Children's area and read to children as they moved from station to station. They also assisted the children with the craft of the day. Everyone seemed to have a great time!

Technology

The Library's upgrade to fiber optics will begin on February 22. It is anticipated that the upgrade will be completed by February 26, but the process could flow over into a second week. During the upgrade process the Library will not have Internet access so the public computers will not be available, people will not be able to check our catalog to determine if we have a certain item, people will not be able to download e-books or e-audio-books, our circulation system will be down and staff e-mail will be down. The staff has worked very hard to plan for this week so that we can continue to offer modified services to the public. We look forward to the completion of this project and know that the end result will be worth the temporary interruption of services.

Webpage Design

Amanda Davis, Tomas Gonzalez and Claire Gutierrez continue to work with DeAnna Phillips, Director of Public Affairs, on the Library's section of the City's webpage.

Anniversary Committee

The Committee is finalizing plans for the Library's 110th Anniversary on April 2, 2016. The festivities will kick off at 10 am that morning with proclamations and cake cutting and continue with entertainment, photo booth and a Library Trivia Scavenger Hunt. The day will conclude with author Anne Hillerman's presentation at 2 pm.

PARKS & RECREATION DEPARTMENT

February 2016

PARKS

Total department acreage	627.2
Parks-acres in inventory	486.2
Recreation Trails	11.2 miles
Full time Employees	16
Temporaries/FTE	4/2
Est. Water Usage	55 thousand gallons

Specifics

- Combined crews from the Golf Course, Parks, YCC staff, and Zoo crew worked together to get some projects done at the Zoo such as put up new fencing, installed new sewer lines, installed new railroad ties, new benches and trash cans, as well as some concrete work, landscaping, and installation of a French Drain.
- Aeration of parks turf.
- Spraying for weeds.
- Installed hand rails at the Roswell Adult Center
- Landscaped the median on N. Main in front of the RMAC
- Preparing Poe Corn Park for installation of Splash Pad, marking, relocating trees, moving irrigation, etc.
- Cleaned up Russ DeKay Park in preparation for Cinco de Mayo Celebration.
- Working on turning on drinking fountains, fixing broken lines throughout the parks in preparation for warmer weather.

Submitted by **Jim Burress**
Parks and Grounds Manager

Approved by **Tim Williams**
Parks and Recreation Director

SOUTH PARK CEMETERY

Number of casket burials	22
Number of cremation burials	3
Veteran's Cemetery casket burials	3
Veteran's Cemetery cremation burials	5
Acres in inventory	210
Full-time employees (FTE) equivalent	7
Total Revenue for February 2016	\$30,630

Maintenance

- Prepared the grounds for the Eagle Scout project.
- Began treating mustard weeds with herbicides.

Specifics

- Serviced a total of 33 services for the month.
- Tamping and opening/closing for all 33 services.

Submitted by **Ruben Esquevel**
South Park Cemetery Supervisor
Daisy Diaz
Administrative Assistant

Approved by **Tim Williams**
Parks and Recreation Director

NANCY LOPEZ GOLF COURSE AT SPRING RIVER

Total Department Acreage	144
Trees	2200
Full Time Employees (FTE) equivalent	7
Temporaries/Full Time Equivalent	2.5
Total Revenue for February 2016	\$27,701

Maintenance

- Greens are now being mowed on Monday, Wednesday and Friday.
- The crew has also been working on irrigation repairs.
- The Bird Sanctuary south of hole number two was cleared of debris and trash.

Specifics

- Four full time employees and two contract employees were working at the zoo, returned on the 8th of February.
- The greens were fertilized on the 19th of the month.
- The crew continues working on the tree trimming project.

	Fiscal 2013		Fiscal 2014		Fiscal 2015		Fiscal 2016
Jul-12	\$ 38,152.57	Jul-13	\$ 38,599.57	Jul-14	\$ 35,771.17	Jul-15	\$27,319.31
Aug-12	\$ 41,308.35	Aug-13	\$ 38,663.39	Aug-14	\$ 32,397.36	Aug-15	\$30,121.17
Sep-12	\$ 28,741.33	Sep-13	\$ 27,130.34	Sep-14	\$ 29,156.11	Sep-15	\$23,038.93
Oct-12	\$ 24,023.36	Oct-13	\$ 26,798.86	Oct-14	\$ 21,767.51	Oct-15	\$19,887.05
Nov-12	\$ 19,935.33	Nov-13	\$ 18,958.67	Nov-14	\$ 17,478.31	Nov-15	\$ 9,154.14
Dec-12	\$ 14,701.89	Dec-13	\$ 16,326.58	Dec-14	\$ 14,889.77	Dec-15	\$11,937.33
Jan-13	\$ 14,931.32	Jan-14	\$ 14,997.19	Jan-15	\$ 10,783.17	Jan-16	\$ 7,497.84
Feb-13	\$ 20,805.21	Feb-14	\$ 23,466.23	Feb-15	\$ 19,359.64	Feb-16	\$27,701.36
Mar-13	\$ 40,049.08	Mar-14	\$ 31,675.38	Mar-15	\$ 29,775.47	Mar-16	
Apr-13	\$ 30,757.89	Apr-14	\$ 29,449.28	Apr-15	\$ 31,859.04	Apr-16	
May-13	\$ 44,648.98	May-14	\$ 41,017.27	May-15	\$ 46,982.97	May-16	
Jun-13	\$ 39,708.28	Jun-14	\$ 33,480.25	Jun-15	\$ 35,759.57	Jun-16	
	\$357,763.59		\$340,563.01		\$325,980.09		

Submitted by David Blewitt
Golf Course Superintendent
 Carlton Blewitt
Golf Course Professional

Approved by Tim Williams
Parks and Recreation Director

RECREATION

Roswell Adult Center estimated attendance	10,451
Special Programs/Co Sponsorships estimated attendance	258
Yucca Recreation Programming estimated attendance	4,506
Cahoon Park Pool	-0-

Revenues

Yucca Admissions	1607
Roswell Adult Center	
Concession	745
Classes	1,196
Rentals	868
Admission	3,274
Total	\$6,083

Specifics

- Yucca Recreation Center basketball teams started off-site – total 960 registered to participate in this year's league.
- Roswell Adult Center Valentine's Dinner Dance was very successful and enjoyed by all in attendance.
- Special Programs: The Pecos Valley Stampede had over 200 participants

Maintenance

- Yucca Recreation Center was closed permanently to the public due to heavy snow damage/mold growth and roof repairs.
- Roswell Adult Center has calls in to facility maintenance for leaks, sinks, and 5 heating units. Painting new offices, wiring, and electrical work completed on office spaces for Yucca Recreation staff.
- Special Programs, work has begun to repair the mobile stage.
- Cahoon Pool has been winterized.

Program/Events

- Yucca Recreation Center: Basketball program operating out of the Boys & Girls Club and Sierra Middle School. Planning underway for the Spring and Summer programs.

- Special Programs: Cinco de Mayo Celebration committee assignments – staff working on their projects.
- Sports/Leagues: Sporting field repairs are gearing up, spring leagues underway.
- Roswell Adult Center: Preparing for New Mexico Senior Olympics and 2nd session of Life Long Scholars programming.

Submitted by Laurie Jerge
Recreation Superintendent

Approved by Tim Williams
Parks and Recreation Director